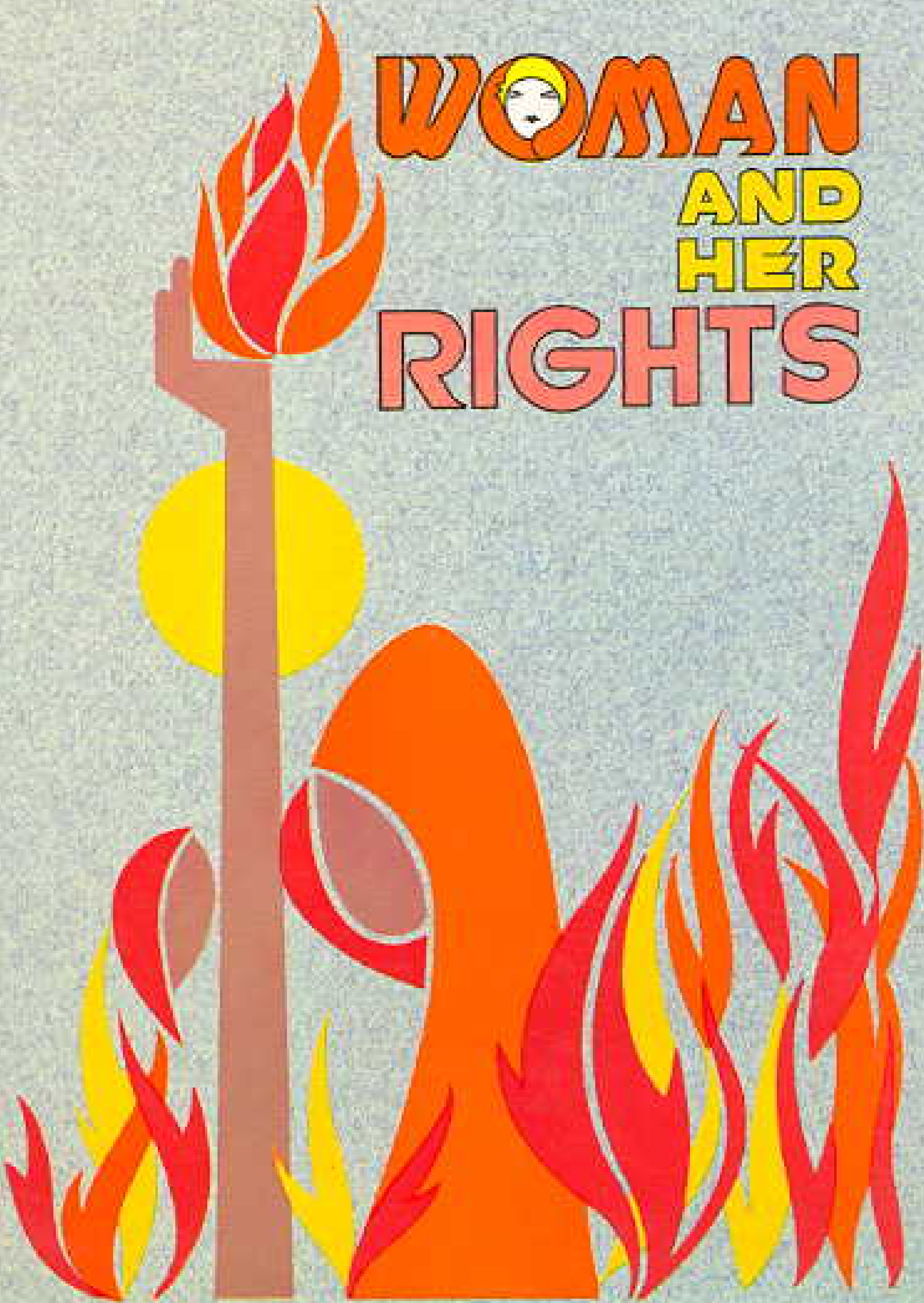
Allamah Murtaza Mutahheri

WOMAN AND HER RIGHTS



Woman And Her Rights

The Author

Ayatullah Murtaza Mutahheri, born 1920, was one of the most versatile Islamic scholars and prolific writers of recent times. He was deeply rooted in traditional learning and enamoured of its exponents. He was a thinker who had fully absorbed a rigorous philosophical training. His work is marked by a philosophical clarity that particularly qualified him to deal with the fundamental problem of religious thought that forms the subject-matter of this book.

Ayatullah Mutahhery received his elementary education in theology from his father, Shaykh Muhammad Husayn in his home town, Fariman. When the Ayatullah was twelve years of age he joined the Educational Centre at Mashad and pursued his studies there for five years. Then he proceeded to Qum, the great centre of Islamic education. He stayed there for fifteen years and completed his education in Islamic Beliefs and Jurisprudence under the supervision of the renowned philosopher Allama Muhammad Husayn Tabatabai, Imam Khomayni and many other distinguished scholars. Then he migrated to Tehran.

During the period of his education the Ayatullah felt that the communists wanted to change the sacred religion of Islam and destroy its very spirit by mixing their atheistic views with the Islamic philosophy and interpreting the verses of the Qur'an in a materialistic manner. Of course, communism was not the only thing which received Ayatullah's attention. He also wrote on exegesis of the Qur'an, philosophy, ethics, sociology, history and many other subjects. In all his writings the real object he had in view was to give replies to the objections raised by others against Islam, to point out the shortcomings of other schools of thought and to manifest the greatness of Islam. He believed that in order to prove the falsity of Marxism and other ideologies like it, it was necessary not only to comment on them in a scholarly manner but also to present the real image of Islam.

Ayatullah Mutahheri wrote assiduously and continuously from his student days right up to 1979, the year of his assassination. Much of his work has been published in and outside Iran. He has written a number of books not in accordance with his personal interest or predilection but with his perception of its need. Wherever a book was lacking in some vital topic of contemporary Islamic interest Mutahheri sought to supply it.

The activities of the Ayatullah were intolerable for the followers of the atheistic schools and they, therefore, decided to remove him from the scene by terroristic methods. Eventually they succeeded on the 1st of May, 1979. His martyrdom was a great tragedy. When the sad news

was conveyed to Imam Khomayni he could not control his tears. In his condolence message he said: "I have been deprived of a dear son of mine. I am lamenting upon the death of one who was the fruit of my life."

Thousands of Muslims escorted his funeral. He was laid to rest in Qum in the precincts of the Holy shrine of Lady Fatimah Ma'sumah.

Ayatullah Mutahhery was a popular figure in the religious and literary circles of Iran. He served in the Tehran University as the Head of the Department of Theology and Islamic Learnings.

At the time of his martyrdom he was the president of the Constitutional Council of the Islamic Republic of Iran and was performing his duties in a very befitting manner.

His works have been translated and published in French, Arabic, Turkish, Urdu and English. The Islamic Seminary has had the honour of publishing some of them.

NEXT

Prologue

In the Name of Allah the Beneficent the Merciful

The requirements of our time make it essential to re-evaluate many vital questions and not to be content with their former appraisal. The system of conjugal rights and family responsibilities is one such question.

For certain reasons, to which we will refer later, it has been presumed that in this age the basic question in this field is that of woman's liberty and the equality of her rights with those of man, all other questions being the by-products of this main question.

However, according to our view, the most fundamental question, or at least one of the most fundamental questions, in respect of family rights, is whether the domestic system is independent of all other social systems and has its own special criteria and logic, or it is just one out of many social systems and the same criteria and philosophy apply to it as are applied to all other social systems.

The basis of the doubt is that, on the one hand, in this system the main parties concerned belong to two opposite sexes, and on the other, it involves the propagation and procreation of the progeny. Nature has made the physical characteristics as well as the reproductive organs of the two parties dissimilar. Domestic society is semi-natural and semi-contractual. It is a middle way between an instinctive society like that of bees or termites, whose rights and duties are pre-determined by nature, with no possibility of breaking any rules, and a contractual society like a civic society of human beings, which has a natural or instinctive aspect.

As we know, the ancient philosophers regarded family life as an independent branch of practical wisdom, and believed in a separate standard for this part of human life. Plato, in his book, The Republic, Aristotle in his book, The Politics, and Abu Ali ibn Sina (Avicenna), in his book, Al-Shifa have also dealt with this subject from this very angle as well.

It is a controversial question whether the natural and innate rights of man and woman are similar or dissimilar; in other words, whether the rights, accorded by nature to human beings, are mono-sexual or bi-sexual, and whether male or female sexuality in any way, affects, or does not affect, human rights and obligations.

In the Western world, a movement for human rights emerged in the 17th century, in the wake of scientific and philosophical movements. The writers and thinkers of the 17th and the 18th centuries made commendable efforts in giving currency to their ideas regarding the natural, undeniable and inalienable human rights. Jean Jacques Rousseau, Voltaire and Montesquieu, who belong to this category of writers and thinkers, are great benefactors of human society, and it may be said that their services are in no way inferior to those of the great inventors and discoverers.

Their basic idea was that human beings have a series of natural and inborn rights and freedoms which are absolutely inalienable and untransferable and cannot be renounced by anyone under any pretext. All people, including rulers and subjects, white and black, rich and poor, are equal.

The result of this social and intellectual movement first manifested itself in England, then in America and afterwards in France. Revolutions were brought about; systems were changed and charters were signed. Gradually, the movement spread into other countries.

In the 19th century, new economic, social and political ideas emerged in the field of human rights. New developments led to the appearance of socialism, the participation of workers in industrial profits, and the transfer of government from the society of capitalists to defenders of labour class.

Till the end of the 19th century, all talks and whatever practical steps were taken in human rights sphere, were mostly confined to the rights of the nations as regards the governments and the employees versus the employers. In the 20th century, the question of women's rights was raised and for the first time in ~948, the United Nations' Universal Declaration of Human Rights proclaimed the equality of rights between man and woman in clear terms.

All social movements in the West since the 17th century had revolved around liberty and equality. As the movement for women's rights was the latest in the series, and the history of women's lot in Europe, from this point of view, was extraordinarily bitter, the UN's Declaration of Human Rights talked of nothing but liberty and equality.

The protagonists of this movement maintained that it was complementary to the movement for human rights. They held that without ensuring women's liberty and equality it was meaningless to talk of human liberty and human rights. They further asserted that the main cause of all domestic troubles was that woman was deprived of her liberty and equality with man, and that all domestic problems would be solved once this aspect was taken care of.

What, in this connection, was overlooked was what we have described as 'the fundamental question regarding the system of family rights', that is, whether this system is, or is not,

independent of other social systems, and whether it has or has not, different criteria and logic. Attention was concentrated only on the general principles of liberty and equality, and the only point taken into consideration was that of natural and inalienable human rights. It was argued that woman, as a human being, was entitled to all the rights enjoyed by man.

In certain chapters of this book, we have adequately discussed the question as to what are the sources from which natural rights are derived. There, we have shown that the basis of all natural rights, is nature itself. If man has special rights, which a horse, a sheep, a bird and a fish does not have, that is due to his nature and the way he has been created. If all human beings are equal in the matter of natural rights and all must live a free life, that is because that order is a part of their very making. The intellectuals, who support the idea of liberty and equality being an inborn right, have no argument other than this. Hence, in the matter of family rights also, we should be guided by nature itself.

Now, let us see why due attention was not paid to the question which we have described as fundamental. Has it been established in the light of modern scientific knowledge that the difference between man and woman is simply organic, and does not affect their basic physical and spiritual beings or their rights and obligations, and that is why it has been ignored in the modern social philosophy?

In fact, the case is quite contrary. In the light of scientific research and biological and psychological discoveries, it has been proved that significant differences exist between the two sexes. In this book, we have discussed this question and have quoted the views of the biologists and the physiologists in this respect. It is surprising that in spite of all that, this fundamental question was ignored. Perhaps apathy on this vital question is due to the hasty development of the women's liberation movement. That is why, while this movement has redressed certain grievances of women, in certain other respects it has caused calamity to them as well as to the human society as a whole. We shall see, later in this book, that the Western woman, till the end of the 19th century, was denied the most elementary human rights. It was only in the beginning of the 20th century that the people of the West thought of making amends for the past. As this movement came in the wake of other movements

for equality and liberty, they expected every miracle from these two words. They forgot that equality and liberty related to the relations between human beings, as human beings only. No doubt, woman, as a human being, is born free like any other human being and in that capacity she has equal rights. But woman is a human being with certain peculiarities, as man is a human being with certain other peculiarities. The traits of their characters are different and their mentality is distinct. This difference is not the result of any geographical, historical or social factors, but lies in the very making of them. Nature has purposely made them different and any action taken against the intention of nature would produce a disastrous result. As we have taken inspiration from nature, with regard to the liberty and equality of human beings, in the same way we should seek guidance from nature itself to decide whether the rights of man and woman are of the same kind, or of two different kinds, and whether domestic society is,

or is not, at least a semi-natural society. It is, at least, a point worth considering whether the bisexuality of animals, including human beings, is accidental or a part of their creative design i.e. whether the sex differences are only superficial and organic or, as Alexis Carell has pointed out, every cell of the human body is stamped with sex, whether man and woman have, or have not, separate missions to perform and whether rights are monosexual or bisexual. The same question may be asked about morals, education, punishments, responsibilities and missions.

During the women's liberation movement attention was not paid to the point that, besides equality and liberty, there existed other questions also. Liberty and equality are no doubt essential, but they are not all in all everything in entirety. Equality of rights is one thing, but the similarity of rights quite another. The equality of man's and woman's rights from the viewpoint of material and moral values is quite different from the uniformity or similarity of their rights. During this movement, intentionally or unintentionally, equality has been used in the sense of similarity and thus quality has overshadowed quantity. It was stressed that a woman is a human being, but it was forgotten that she is a woman too.

In fact, this indifference was not the outcome of mere haste; there were other factors also, which impelled the exploitation of woman in the name of liberty.

One of them was the excessive greed of the industrialists, who wanted to lure woman from her house to a factory, in order to exploit her economic potentiality. For this purpose, they advocated woman's rights, her economic independence and her liberty and equality of rights with those of man. It was they who secured official recognition to these demands. Will Durant, in chapter IX of his book, "The Pleasures of Philosophy", after mentioning certain humiliating theories about woman advanced by Aristotle, Neitzsche, Schopenhauer and some Jewish scriptures and referring to the fact that during the French Revolution, though there was some talk about woman's liberty, there was practically no change, says that till the end of the 19th century woman hardly had any right to respect, to which man could he legally bound. Then he discusses the cases which led to the change in the situation in the 20th century. He says that the liberty of woman is a by-product of the industrial revolution.

He adds that female workers were cheaper and the employers preferred them to strong-headed and costly male workers. A century ago, it was hardly possible for men to get a job, but there were advertisements asking them to send their women-folk and children to the factories. The first step towards the emancipation of women was taken in 1882, when a law was enacted according to which the women of Great Britain acquired an unprecedented privilege of keeping with themselves whatever money they earned.(Dr. Ali Shayagan, in his commentary on the Iranian Civil Code, writes that the independence, in respect of property, which a woman enjoys now and which has been recognised by the Shi'ah law from the very beginning, did not exist in ancient Greece, Rome, Germany and till recently in most of the other countries. She, like a minor and a lunatic, was interdicted from the disposition of her property. In England, where previously her personality was completely merged with that of

her husband, two laws were enacted, one in 1870 and the other in 1882, which removed inhibitions regarding the ownership of property by a married woman.) This law, described to be in keeping with high moral values of Christianity, was passed by the mill-owners and the House of Commons, to lure the women of England to the factories. Since that year, an irresistible desire to earn money has forced them to labour in stores and factories, and has relieved them of labour in household chores. (The Pleasures of Philosophy, pages 155 - 159).

With the development of machines and the ever-increasing growth of production it became necessary for the capitalists that, in order to impose their surplus products on the consumers, they should employ all audio-visual, intellectual, emotional, artistic and sexual means. To convert the consumers into consumption factors and to make them as powerless tools in consumption market they utilised the services of women, but not as simple workers participating in the process of production along with men. They, on the other hand, exploited their beauty, charm and sexual attraction and persuaded them to stake their honour and self-respect to be able to pervert the consumers and force their own will on them. Obviously all these things have been done in the name of freedom for women and their equality with men.

Politics also did not lag behind in utilising this factor. You regularly read such reports in the newspapers and magazines. Woman is exploited and her services are used to fulfil the objects of men under the cloak of liberty and equality.

Obviously the youth of the 20th century could not miss this valuable opportunity. In order to allure her, without shouldering conventional responsibilities, and to prey upon her freely, he, more than anyone else, shed crocodile tears for women's helplessness and the undue discrimination against her. To be able to make a greater contribution to this 'sacred cause', he went to the extent of delaying his own marriage till the age of 40 or even remaining single for ever.

No doubt, the present century has rectified many grievances of woman, but it has also brought many misfortunes to her. Why? Is she doomed for ever and has she no way out of this vicious circle? Is it not possible for her to get rid of all her old and new misfortunes at one and the same time? Are women condemned to one of these two sufferings and must be compelled to choose one of these two ways?

In fact, it is not at all necessary that she should continue to suffer. She suffered in the past, mostly because it was forgotten that she was a human being. She is suffering now because her womanhood, her inborn requirements, her natural rights and demands and her special capabilities have been ignored, intentionally or otherwise.

What is more surprising is that whenever there is a talk of natural and inborn differences between man and woman, some groups have tendency to regard such differences as a mark of imperfection of woman and the perfection of man. Many such presumptions lead them to

believe that men have certain privileges, whereas women are deprived of them. They do not seem to know that there is no question of perfection and imperfection. It was not the intention of the Creator to make one of them perfect and privileged and the other defective and deprived.

These kind of people, basing their arguments on their such amazing logical and wise presumptions, assert that, as nature has been unkind to woman, we should not add insult to injury and, as such, it is more human to ignore her womanhood! But, in fact, it is the disregard of woman's natural position which mostly leads to her being deprived of her rights. If men form a front against women they say: "As both of us are equal, our work, responsibilities, rewards and retributions must be similar. You must share with us in our hard and heavy jobs, take wages according to the amount of the work you perform and must not expect any consideration, respect or protection. Bear your own expenses and share the maintenance of the children with us and make your own arrangements for defending yourselves against all perils. You should spend on us as much as we spend on you".

If such a situation arises, women may be the losers, because by nature they have a less productive capacity, while their consumption of wealth is more than men's. Their menstrual cycles, hardships of pregnancies, pains of childbirth and the nursing of children place them in a position in which they require men's protection. They are in need of more rights and cannot afford to have less commitments. This position is not peculiar to human beings. It applies to all animals living in pairs. In the case of all such animals the male instinctively protects its female partner.

Due attention to the natural position of man and woman and to their equality and common rights as human beings place woman in such a comfortable position that neither is her person injured nor her personality affected.

To have some idea of the results of ignoring the natural position of man and woman, let us see what those, who have gone the whole hog on this path, say and write.

Some time ago an interesting article appeared in the American magazine 'Coronet'. It is worth reading. It tells the story of a woman who, in the name of equality between man and woman, lost the concessions which she enjoyed previously. Previously, women were not required to lift weights of more than 25 lbs., whereas no such limit existed in the case of men. She says that now the working conditions in the General Motors Factory, in the State of Ohio, where nearly 2500 woman workers toil, have undergone a change. Now she finds herself maintaining a very powerful steam engine or cleaning a 250 lb. metal oven, placed there a few moments earlier by a strongly built male worker. She feels completely exhausted and knocked out. She further says that every minute she has to hook a 25 to 50 inch handle, weighing 35 lbs. Her hands are always swollen and aching.

This article later narrates the anxiety and anguish of another woman whose husband is a seaman in the Navy. Recently, the Admiral decided to detail a number of women to work along with men aboard the ships. She writes that one ship, with a crew of 40 women and 480 men, was sent on duty. When the ship returned after her first voyage the worst fears of the wives of the seamen were confirmed. Soon it was known that not only were there many romances aboard the ship, but most of the women had had sexual relations with more than one individual.

The article says that in the State of Florida the widows are very worried since the liberation of women, because a judge of this State has declared the law, visualising a subsidy of up to 500 dollars to widows to be unconstitutional on the ground that it was discriminative against men.

The article adds that the widows of Florida are the first to suffer. Others too will, in their turn, have a taste of liberation. For many the question is whether the women have lost more than they have gained. But it is no use crying over the spilt milk. The show has begun and the spectators have occupied their chairs. This year the 27th amendment to the constitution is scheduled to be passed and according to it, all privileges arising out of sex will be declared illegal. Thus, the fears expressed by Professor Ruscobound, of the Law College, Harvard, that Women's liberation is the origin of the regrettable consequences of the legal position of woman in America, will come true.

G. Irvin, a senator of North Carolina, after studying the American society, where men and women have equal rights, proposes that all family laws should be amended and men should no more be held responsible for maintaining the family.

According to this magazine, one Mrs. Macdaniel says that,
on account of lifting heavy weights some female workers of her factory suffered from internal haemorrhage. These women want to return to their previous position. They want to be treated as women and not as mere workers. For the supporters of equality it may be a simple matter. They sit in their luxurious apartments and talk of equality, but they have never been to the factories, where most of the wage-earning women of this country have to work. Mrs. Macdaniel says that she does not want this equality, because she cannot do manly jobs. Men are physically stronger than women. She would prefer to give up the job rather than compete with men. The privileges which the working women of Ohio have lost, are far greater than the benefits they have gained under the protection of the workers' law. The women have lost their personality. It is not known what they have gained after emancipation. The position of a few women might have improved, but not of all.

This was the gist of that article. It is clear from its contents that these women are so fed up with the discomforts which have been imposed upon them in the name of liberty and equality that they have become allergic to these two words. They forget that the words are not to be blamed. Man and woman are two stars with their distinct orbits within which they should

move. *"It is not given to the sun to overtake the moon, nor can the night outpace the day.. Each in its orbit floats"* (Surah Yasin, 36:40). Their happiness, as well as the happiness of the whole human society, depends on the condition that they move in their respective orbits. Liberty and equality can be useful only if both the sexes follow their normal and natural courses.

When we say that the question of women's rights at home and in the society should be re-evaluated and should not remain limited to previous evaluations, we mean that we should be guided by nature and should take into consideration all the bitter and sweet experiences of the past, especially of the present century. Only then will the movement for women's rights be reasonable in the real sense.

It is admitted by every friend and foe that the Holy Qur'an revived the rights of women. Even the adversaries admit, at least, that the Holy Qur'an at the time of its revelation took a long step towards improving the condition of women and restoring their human rights. The Qur'an revived the rights of woman as a human being and man's partner in humanity and human rights, but did not overlook her womanhood or man's manhood. In other words, the Qur'an did not overlook woman's nature. That is why complete harmony exists between the dictates of nature and the dictates of the Qur'an. The woman in the Qur'an is the same as the woman in nature. These two great divine books, one created and the other compiled, fully conform to each other. The main aim of our book is to highlight and explain this harmony.

Preface

In the name of Allah, the Beneficent, the Merciful

THE PROBLEM OF FAMILY RELATIONS

The problem of family relations in our times is not so simple that it may be resolved by arranging opinion polls of young boys and girls, or by holding seminars. It is neither confined to any one country, nor has any country so far claimed to have solved it successfully.

Will Durant, the well-known philosopher and author of "History of Civilization", says: "If we suppose that we are living in 2000 A.D. and want to know what was the biggest event of the first quarter of the 20th century, we shall notice that it was neither the First World War nor the Russian Revolution. It actually was the change in the position of women. History has seldom witnessed such an exciting change in such a short time. The home, which was the basis of our social organisation, the conjugal system, which prevented debauchery and gave stability to family life, and the complex moral law which helped us in advancing from barbarism to culture and orderly social behaviour, all have been upset by this revolutionary change".

Even now, when we are living in the third quarter of the 20th century, we, more than ever, hear complaints that the domestic system is collapsing, the basis of matrimony is weakening, the young men are evading marriage, the young women are hating motherhood, the relations between the parents (especially mothers) and the children are deteriorating, modern woman is getting vulgar, love is being replaced with cheap sensuality, cases of divorce are ever growing, the number of children born of unregistered wedlock or marital ties not formally legalised is on the increase and sincerity, respect and cordiality between husband and wife are becoming rare.

SHOULD WE IMITATE THE WEST OR BE INDEPENDENT?

It is regrettable that some of the misinformed people think that the questions related to family relations are similar to the problems of guiding tourists, taxi-driving, bus-driving and laying the network of water-pipes and electricity, which were solved by the Europeans long ago and if we, because of our inefficiency or incompetency, still face any difficulties we should follow

their example as soon as possible.

This is a mere illusion. The Europeans are the worse victims of the domestic problems than we are. They are suffering more and their intellectuals are more outspoken. Leaving aside the question of female education, they are in a mess in respect of all other questions. Their family life is far less happy than ours.

COMPULSION OF HISTORY

Some people think that the deterioration and corruption of the family system is due to women's liberation which, in turn, is the unavoidable result of industrial life and the progress of science and civilisation. It is a question of compulsion of history. We have no alternative but to submit to this corruption and chaos, and to forget all about the domestic happiness which we enjoyed before.

This way of thinking is very superficial and childish. We admit that industrial life has affected family relations and is still affecting it, but the main factors, which have disrupted family life in Europe, are two:

One of them consists of the foolish and cruel customs, usages and laws which were prevalent in Europe till a century ago. It was only at the end of the 19th century and the beginning of the 20th century that women in Europe secured the right of

ownership of property. The other factor is that those who undertook to improve the position of women chose a wrong path: They intended to beautify her eyebrows, but deprived her of her eyesight!

More than the industrial life, the old laws of Europe and the reforms of the modernists are responsible for the present chaos and confusion. Hence, there is no compelling reason for us, the Muslims of the East, to go the way they have gone and fall into the morass into which they have fallen. We should be cautious about western life.

We should look at the western life cautiously. While utilising and acquiring their sciences, industries, techniques and some commendable and imitable social regulations we should refrain from imitating their customs, usages and laws which have brought so much miseries to them - for example amending civil laws and family relations and conforming them to the western laws.

Social Independence of Women

INDEPENDENCE OF CHOOSING DESTINY

One day a girl, who looked very perturbed, came to the Holy Prophet and said: "O Messenger of Allah! My father has done me a great injustice".

"What has your father done?"

"He has a nephew and he has married me to him without taking my consent".

"If so, agree to what he has done and be the wife of your cousin

"I don't like my cousin. How can I be the wife of a person whom I don't like".

"Then nothing has gone wrong. If you don't like him, go and choose another person whom you like".

"By the way, I like him very much. I don't like any other person. I won't he the wife of anybody else. But, because my father gave me in marriage without taking my consent, I intentionally came over to have a talk with you. I wanted you to say what you have said. I wanted all the women to know that the fathers no longer had a right to decide as they pleased and give their daughters in marriage to whomsoever they liked".

The incident has been narrated by eminent jurists in such books as the *Masalik* (by Shaheed Thani) and the *Jawahirul Kalam.* During the pre-Islamic period the Arabs, like all other people of those days, thought that they 'had full authority in regard to their daughters and sisters and sometimes even in regard to their mothers. They did not acknowledge the rights of women to choose their husbands, this choice being the exclusive privilege of the fathers or the brothers and, in their absence, of the paternal uncles, so much so that prospective fathers could give their daughters in marriage even before they were actually born. A man could enter into a contract with another man pledging that if a daughter was born to the former, she would, when grown up, be the wife of the latter.

MARRIAGE BEFORE BIRTH

One day, during his last pilgrimage, while the Holy Prophet was riding and had a whip in his hand, a man approached him on the way and said:

"I have a complaint to make".

"Yes, what's the matter?"

"Years ago, during the pre-Islamic days, Tariq ibn Murqa'a and I took part in a battle. During the fighting he came to require a lance and cried: "Is there anybody who will give me a lance and take a reward?" I went to him and asked him what reward he would give. He said that he would bring up for me the first daughter that was born to him. Since then years have passed. Recently, on inquiring, I found out that he has a grown up daughter in his house. I went to him and reminded him of the promise. But he went back on his promise and demanded a fresh dower. Now I have come to you to find out whether he is right, or I am right".

How old is the girl?"

"The girl is grown up. Grey hair has also appeared on her head".

"If you ask me, neither you nor Tariq is right. Go after your business and leave the girl alone".

The man was taken aback at this reply and stared at the Prophet for several moments. He wondered what sort of verdict it was. Even if he paid a fresh dower to the girl's father and he willingly gave his daughter to him, still the deal was not proper.

The Prophet observed his wondering looks and said: "Don't worry. If you do things the way I have told you, neither you nor your friend, Tariq, will be doing anything wrong".

EXCHANGE OF DAUGHTERS

During the pre-Islamic days there was a form of marriage in vogue in Arabia under the name of *Shighar* marriage, (exchange of daughters) which was a manifestation of the absolute authority of the fathers over their daughters. A man would give his daughter in marriage to another man in consideration of the latter giving his daughter in marriage to him. In such a form of marriage neither of the wives would get a dower. Islam abolished this custom. It is worth noting that the Holy Prophet allowed full liberty to his daughter Fatimah Zahra (Peace be upon her) in choosing her husband.

He gave in marriage several other daughters also, but he did not deprive them of their freedom. When Ali Ibn Abi Talib, (peace be on him), approached the Holy Prophet, seeking Fatimah's hand, the Prophet said that several other people had already approached him and that he had conveyed their proposals to Fatimah, but she turned her face away, as a mark of disapproval. The Prophet assured Ali that he would convey to her his proposal as well.

The Prophet went to Fatimah and told his beloved daughter what Ali wanted. This time she did not turn her face away, but kept quiet and thus expressed her consent. When the Prophet came out, he was happy. He exclaimed, "Allah is the Greatest!"

THE ISLAMIC MOVEMENT FOR WOMEN'S LIBERATION

Islam has done a great service to women. It not only put an end to the absolute control of the fathers, but gave women freedom, a personality and independence of thinking and opinion.

It officially recognised her natural rights. However, there are two basic differences between the steps taken by Islam and what is happening in the West and is being followed by others.

The first difference concerns the psychology of man and woman. Islam has done and revealed wonders in this respect. We shall further discuss this question in the subsequent chapters.

The second difference is that, while Islam made the women aware of their rights and gave them an identity, a personality, freedom and independence, it did not instigate them to revolt and harbour malice against the male persons.

The Islamic movement for women's liberation was white. It was neither black nor red; neither blue nor violet. It did not put an end to the respect in which the daughters held their fathers and the wives their husbands. It did not upset the basis of the family life and did not make women suspicious of their responsibilities in regard to their fathers and husbands. It did not provide any opportunity to the unmarried men who are always after enticing women. It did not snatch away the wives from their husbands and the daughters from their parents and did not hand them over to the sensual executives and the moneyed magnates. It has done nothing similar to what has caused a hue and cry across the oceans that the sacred family system has broken into pieces. There the paternal protection has vanished. No one knows what to do with all the corruption that is rampant, with the ever-growing cases of infanticide and abortion, with 40 per cent illegitimate children and with those new-born infants whose fathers are not known and whose mothers do not want to have anything to do with them, because they were not born in lawful wedlock. The mothers of such children simply hand them over to some social organisations and then never come back to inquire about them.

No doubt, we in our country are in need of a movement for women's liberation, but what we need is a clean Islamic white movement and not a movement of the European brand with a

dark and gloomy taint. We want a movement in which sensual young men should have lesser part and which should spring directly from the lofty teachings of Islam and be based on the deep and logical study of the Muslim society.

THE FATHER'S PERMISSION

The question, which needs examination from the point of view of the authority exercised by fathers over their daughters, is whether the father's consent is essential in the case of a maiden's first marriage.

From the Islamic point of view certain things are indisputable.

The boy and the girl both are economically independent. Every sane adult is entitled to have full control of his or her property, provided he or she is mentally mature, that is, capable of taking care of themselves. A father, a mother, a husband or a brother has no power of supervision or intervention in this respect.

Another point, which is indisputable, relates to marriage. The adult and mature boys have full liberty in this respect and nobody else has any right of intervention. The position of the girl, who has been married once and is now without a husband, is the same. But the case of a maiden, who wants to marry for the first time, is a little different.

It is beyond any doubt that the father cannot force even a maiden to marry any person against her will. We already know what the Holy Prophet told the girl whom her father had given in marriage, without taking her consent. The Prophet said that if she was not happy, she could marry someone else. But there exists a difference of opinion among the jurists as to whether a maiden can contract a marriage without the consent of her father and whether the validity of her marriage is in any way conditional to the consent of her father.

There is one more point about which there is absolutely no dispute. If the father withholds his consent without a sound reason, he loses his right. The jurists are unanimous that in such a case the daughter is free to contract a marriage with anyone of her choice.

But otherwise, as we have pointed out, the jurists differ on the point, whether the validity of the marriage of a maiden depends on the consent of her father. Most of the jurists, especially the later ones, are of the view that it does not. But still there are some who are of the opinion that it does.

This being a disputed point, it is not possible to discuss it from the Islamic point of view. Anyhow it can be discussed from a social point of view.

MAN IS AFTER SEX, WOMAN IS AFTER LOVE

The basis of the rule that the maidens must not or, at least, should not marry without the consent of their fathers is not that they are considered to be less mature than the boys. Had it been so, there should have been no difference between a 16 year old girl, who had previously been married, and as such does not require her father's consent, and a 17 year old maiden who requires it according to the view of some jurists. Moreover, had Islam considered girls to be immature it would not have regarded the transactions, involving money and properties, made by them independently, as valid. Apart from the legal arguments, this point has a definite philosophy which cannot be ignored.

It is not a question of the immaturity or intellectual inadequacy of woman. It is related to a definite aspect of the psychology of the two sexes i.e. man's instinct of alluring and woman's instinct of credulity in regard to man's faithfulness and truthfulness.

Man is after sex and woman is after love. Man is overpowered by his sexual urge, whereas, woman, according to the psychologists, has a greater capacity of controlling and concealing her desires. It is the melody of love, sincerity and faithfulness which subdues woman and brings her to her knees. That is what we mean by credulity of woman.

As long as the woman is a maiden and has had no experience of men, she can easily be lured by his love songs.

Professor Reeck, the American psychologist, says that the best sentence which a man can say to a woman is 'Darling, I love you'. He says that good luck for a woman means to be able to win the heart of a man and to retain it for the rest of her life.

The Holy Prophet, the divine psychologist, clearly expressed this truth 1,400 years ago. He has said that if man expresses his love to a woman, she never forgets that.

The men who are after enticing a woman fully exploit this womanly feeling. The words, 'I am dying for you' are the best lure for enticing girls who have had no experience of men.

That is why it is essential that a girl, who has had no experience of men, should consult her father and should obtain his consent prior to contracting a marriage. Fathers know the mentality of men better and, leaving aside very exceptional cases, wish their daughters well.

In this case, the law has in no way degraded woman, but has taken a step to protect her interest. To raise an objection against the necessity of obtaining a father's consent in the case of girls is more illogical than to ask why a father's or mother's consent has not been made necessary in the case of boys.

I wonder how the people, who daily come across incidence of the evils of free romance between boys and girls, still advise the girls to revolt against and he indifferent to the advice of their guardians.

In our view this act amounts to a sort of collusion between those who claim to have sympathy with women and those who are after enticing them. The former prepare the ground for the latter and make their job easier.

The girls have an absolute option in the matter of marriage. Only its validity depends upon the consent of the father, provided that he does not withhold it with any bad intention, or because he is not competent to exercise his judgement rightly for any special reason. Can anything be wrong with such a rule, or can it be regarded as against the basic concept of human liberty?

It is just a precaution to safeguard the interests of inexperienced girls and is based on a sort of suspicion about the male nature.

In this respect no objection can be raised against the Islamic law as such. What is objectionable is the custom prevailing among the Muslims. Most of the fathers still think that they have absolute authority and regard it as against her modesty, if a girl expresses her views about the selection of her partner in life, who is to be the father of her future children. They mostly do not pay attention to the intellectual maturity of the girl, which, according to the Islamic law, is an indisputable necessity. Many marriages, which take place before the girls are mature, are legally invalid and void. Mostly no inquiry is made about the maturity of the girl and puberty is considered enough. But we know what the great jurists have written about testing the intellectual maturity of the girls. Some jurists have regarded religious maturity also as a condition of marriage. They hold that only those girls who know the principles of religion with reason and proof are fit for marriage. Unfortunately, most of the guardians and those who preside over the religious ceremony of the marriage do not observe these conditions.

It may be mentioned that in all old marriage deeds the words 'adult, sane and mature' are found along with the names of the bride and the bridegroom.

Anyway, according to the Shi'ite law, a woman who is adult and mature and has once been married does not require her father's consent.

BACK NEXT

Islam and Modern Life

ISLAM AND MODERN LIFE - I

The question of religion and modernity is one of those subjects which do not concern the Muslims alone. Other religions also had to face this question. Many liberal minded people in the world have renounced religion, because they are under the impression that religion and modern life are incompatible. They think that inertia, stagnation and rigidity are the inherent properties of religiousness. In other words, they think that inertia, monotony and the maintenance of status quo are the characteristics of religion.

The late Mr. Nehru, a former Prime Minister of India, had secular ideas and did not have faith in any religion. It appears from his statements that what made him averse to religion was its rigidity and monotony.

Towards the end of his life Nehru felt a vacuum within himself and in the world and believed that it could be filled only by a spiritual force. But still, he was not inclined to accept any religion, because he believed that a state of rigidity and monotony pervaded all religions.

An Indian journalist, named Karanjia, interviewed Nehru towards the end of the latter's life and apparently this was the last interview during which Nehru expressed his views on general world problems. While talking about Gandhi, Karanjia said:

"Some liberal and progressive elements believe that Gandhiji, through his emotional solutions and moral and spiritual ways, weakened and dampened your original belief in scientific socialism".

In the course of his reply, Nehru said: "It is necessary and good to take advantage of moral and spiritual ways. I have always agreed with Gandhiji in this respect. I believe that it is more necessary to take advantage of these means, for now, more than ever, we need moral and spiritual answers to the questions resulting from the moral vacuum caused by the modern culture, which is becoming popular."

Then Karanjia put questions about Marxism. Nehru admitted its imperfection and, in his replies, pointed out some of its failures. He again suggested a spiritual solution to the world's problems. At this juncture, Karanjia said: "Mr. Nehru, does not your present concept of moral

and spiritual solutions make you different from yesterday's Jawaharlal (Nehru himself during his youth)? What you have said gives an idea that Mr. Nehru, towards the end of his life, has come out in search of God".

Nehru said: "Yes, I have changed. My emphasis on moral and spiritual values and the solutions is not unintentional". He added: "Now the question is how to raise the morality and spiritualism to a higher level. No doubt, for this purpose, religion is there, but unfortunately it has taken the shape of a short-sighted and rigid ritualism and has been reduced to dry formalities. Only its apparent form and external shell have remained and its real spirit and concept have disappeared".

ISLAM AND THE REQUIREMENTS OF THE TIME

Of all the religions Islam alone is more concerned with all the aspects of human life. Its teachings are not confined to acts of worship and prayer and to a set of moral counsels. As Islam has dealt with men's relations with God, it has also given the broad lines of men's relations with each other. It has, in various forms, dealt with individual rights and obligations, too. That is why the question whether its teachings are applicable or not to the ever-changing circumstances is more valid in the case of Islam than in that of any other religion.

Incidentally, many non-Muslim intellectuals and writers have studied the social and civil laws of Islam and have commended them as a body of progressive laws. They have paid rich tributes to Islam, as a living and everlasting religion, and have recognised the applicability of its laws to all times and circumstances.

The well-known liberal minded English writer, Bernard Shaw has said: "I have always held the religion of Muhammad (P) in high estimation, because of its wonderful vitality. It is the only religion which appears to me to possess that assimilating capability to the changing phase of existence, which can make itself appeal to every age. I have prophesied about the faith of Muhammad that it would be acceptable to the Europe of tomorrow, and the signs of this are becoming apparent even now. The medieval ecclesiastics, either through ignorance or bigotry, painted Muhammadanism in the darkest colours. They were, in fact, trained both to hate the man, Muhammad, and his religion. To them Muhammad was anti-Christ. I have studied him, the wonderful man, and, in my opinion, far from being anti-Christ, he must be called the Saviour of Humanity. I believe that if a man like him were to assume the leadership of the modern world, he would succeed in solving its problems in a way that would bring it the much needed peace and happiness".

Dr. Shibli Shama'il is an Arab materialist of Lebanon. He, for the first time, translated Darwin's 'Origin of Species' into Arabic, along with the German scientist Boucher's commentary on it, giving it the name of 'A weapon against religious beliefs".

Though he is a materialist, he does not feel shy of admiring Islam and its great founder. He appreciates Islam as a living religion, applicable to all times.

This man, in the second volume of his book "Philosophy of Evolution", which he has published in Arabic, has written an article under the caption "The Qur'an and Civilisation". He has written this article to refute a non-Muslim who had travelled in the Muslim countries and had expressed the opinion that Islam was responsible for the decline of the Muslims. Shibli Shama'il has tried to prove that actually the cause of the decline of the Muslims is their deviation from the social teachings of Islam. Those Europeans who attack Islam, either do not know it or criticise it with the bad intention of making the people of the East sceptical about their laws and their system with a view to keeping them under the western tutelage.

During our time the question, whether Islam is compatible with the present age, has become a burning question. We meet a cross-section of people, especially those belonging to the educated class and we find that this question is asked more often than other questions.

OBJECTIONS

Sometimes these people give a philosophical turn to their query and say that everything in this world is subject to change. Nothing is static and stationary, human society being no exception. Then, how can a body of laws remain unchanged through the ages?

If we look at this question from a purely philosophical point of view, the answer is simple. It is the material things of the world which are ever changing; which grow and decline, and which are subject to evolution and decay. As for the universal laws, they do not change. For example, all living things have evolved and continue to evolve according to certain laws which have been set forth by the scientists. The living things themselves are, no doubt, ever changing, but the laws of their evolution and development are not subject to any change. And we are at present talking about the laws. In this respect it makes no difference whether the laws are natural or have been framed and compiled, for it is possible that the laws which have been framed might have nature as their source and be in conformity with the evolutionary process of the individuals as well as the human society as a whole.

Anyhow, the queries in respect of the compatibility and incompatibility of Islam with the requirements of the time do not have a general and philosophical aspect alone.

The question, which is more often asked, is that when the laws are framed to meet human requirements which are not constant, how can social laws be constant and unalterable?

It is a good question. Incidentally, it is a miraculous characteristic of Islam that it provides constant laws to meet all constant requirements of the individuals and the society, and flexible laws for the temporary and changing requirements. This is its characteristic of which all

judicious and knowledgeable Muslims are proud of. We propose to explain it further to an extent appropriate to the present occasion.

IS THE SOCIAL CHANGE COMPATIBLE WITH TIME?

Before going into this question we should like to bring forward two points:

The first point is that most of the people who talk of progress, development and change in a situation suppose that any social change, especially if its source is in the West, is the consequence of progress and development. This is one of the most erroneous ideas entertained by the present generation.

These people are under the impression that as the means of life change from day to day, and the imperfect ones are replaced by the perfect ones and as science and industry are constantly advancing, all changes in human life are a sort of progress and advancement and should be welcomed as such. Not only that, they think that such changes are inevitable and have to come with the passage of time.

In fact, all changes are not the direct result of the advancement of science and industry, nor are they inevitable. While science is progressing, the selfish and animal nature of man is also not idle. Knowledge and wisdom carry man towards perfection and the selfish and animal human nature pushes him towards corruption and perversion. The animal nature of man always tries to utilise knowledge as a means of attaining its base desires. With the passage of time, as progress and development takes place, corruption and perversion also grow. We have to march forward with the advancement of time, but at the same time we must fight corruption also. The reformer and the reactionary both fight against time, with the difference that the reformer fights against the perversion of time, and the reactionary fights against its progress. If we regard time and its changes as the criterion of all good and evil, then what is the criterion to judge time itself? If everything should conform to time, then what should time conform to? If man should follow time and its changes with folded hands, then what will happen to the constructive and creative role of the human will? Man is riding the vehicle of time, which is in motion. He must not be negligent of guiding and controlling his vehicle. Otherwise, he will be like a person mounted on horseback, who leaves himself to the will of the horse.

ADJUSTMENT OR ABROGATION?

The second point worth mentioning here is that some people have solved the difficult problem of 'Islam and the requirements of time' in a very simple and easy way. They say that Islam is an everlasting religion, and it can be adjusted to every age and every time. But when asked how this adjustment takes place and what its formula is, they at once say that when the circumstances change, the existing laws are repealed and replaced by other laws. They argue

that the temporal laws of religion must be flexible and in harmony with the progress of knowledge and science and the expansion of culture and civilisation. According to them, such flexibility and adjustability to the requirements of time conform to the spirit of Islam and are not against its teachings.

They hold that, as the requirements of time are always changing, every age demands a new set of laws. They further hold that the civil and social laws of Islam are in conformity with the simple life of the pre-Islamic Arabs, and are mostly based on their customs and usages. As they are not compatible with the present age, they should be replaced by modern laws.

Such people should be asked: If adjustability means capability of being repealed, which law does not have this type of flexibility? Is there any law which is not compatible with time in this sense?

This interpretation of flexibility and applicability to all times is exactly like saying that books and libraries are the best means of enjoying life, because whenever one wants enjoyment, one can sell them and spend the money so obtained, on the gratification of one's desires.

An Iranian writer says that the teachings of Islam are divided into three parts. The first part consists of basic doctrines, such as Divine Unity, Prophethood, Resurrection etc. The second part is related to the acts of worship such as prayer, fasting, ablution, ritual cleaning, pilgrimage etc. The third part consists of the laws concerning the life of the people.

According to him only the first two parts are an integral part of religion, and something to be preserved for ever. As far as the third part is concerned, it is not an integral part of religion, for religion is not concerned with the daily way of life of the people. The Holy Prophet himself did not prescribe these laws as a part of religion, for they were not related to his mission as Messenger. It was only a chance that, as the Head of the State, he had to give some laws also. Otherwise, religion has nothing to do with the worldly life of the people.

It is hard to believe that a person living in a Muslim country should be so ignorant of the precepts of Islam.

Has not the Qur'an described the aim of the Prophets and the Apostles? Does not the Qur'an expressly say: *"We have sent Our Messengers with clear proof and We have sent down with them the Book and the Balance, so that people may rise with justice"* (Surah al-Hadid, 57 : 25). The Qur'an describes social justice as the main aim of all the Prophets.

If you like, you may not act on the teachings of the Qur'an, but why do you commit a bigger sin by bringing a calumny against Islam and the Qur'an? Most of our misfortunes are due to the fact that our morals and laws have lost their only source of strength, viz. religion.

It is only during the past half a century that we have come to hear the cry that Islam is good, provided it remains confined to the places of worship, and has nothing to do with the society. This cry has burst forth from across the frontiers of the Muslim countries, and has been propagated throughout the Muslim world.

To make the purpose of this cry clearer, it may be said that the idea behind it is that Islam should stay as a force to withstand the spread of communism, but when it clashes with the interests of the West, it must go. From the viewpoint of the West, the devotional rites of Islam must continue so that the Muslims, whenever need be, could be stirred up against the atheistic and godless system of communism, but the social rules of Islam which provide a philosophy of life to the Muslims must go, for these rules give the Muslims a sense of independence and separate identity, and prevent their being swallowed up by the greedy West.

Unfortunately, the exponents of the thesis that Islam is not concerned with the daily practical life, have ignored certain basic facts.

Firstly, Islam, 1,400 years ago, depreciated the principle of, "We believe in certain things (some of the teachings of Islam) and reject the others", and proclaimed that the rules of Islam are irreversible.

Secondly, we believe that the time has come, when the Muslims should not be misled by such deceptive slogans. The critical sense of the people has now, more or less, been awakened, and gradually they are beginning to differentiate between the manifestations of progress and advancement, which are the outcome of the blooming of the scientific and intellectual forces, and the manifestations of corruption and perversion, though their source be in the West.

The people of the Muslim world have now, more than ever, become conscious of the value of the teachings of Islam, and have realised that they can lead an independent life only by following them. They are not going to give them up, at any cost.

The vigilant Muslims know that the propaganda against Islamic laws is nothing but an imperialistic fraud.

Thirdly, the exponents of this thesis should know that Islam, when powerful, withstands any other system, whether it is atheistic or not. Islam wants to dominate the society as a philosophy of life, and does not want to be confined to the 'masjids' and other places of worship. The Islam which will be restricted to the places of worship, will vacate the field, not only for the Western ideas, but it will vacate it for the anti-Western ideas and doctrines as well.

The penalty which the West is paying, in certain Muslim countries, is the result of its not realising this fact.

ISLAM AND MODERN LIFE - II

Man is not the only living being which leads a social life. Many animals, especially insects, are gregarious. They follow sensible but fixed rules of co-operation, division of labour, production and distribution, and giving and receiving orders.

The bees, and certain kinds of ants and termites enjoy such superb systems, that it will take man, who considers himself to be the prince of creation, years, even centuries, to reach that level.

Their civilisation, contrary to the human civilisation, has not passed through such periods as the forest age, the stone age and the atomic age. They, from the very beginning, have had the same civilisation and the same system as they have today. It is man who started his life from a scratch: Vide Surah al-Nisa, 4 : 28 *"Man was created powerless"* and is marching forward towards infinity.

For the animals, the requirements of life are always the same. For them, modernity and new fashions have no meaning. The ancient world and the modern world do not exist for them. So far as they are concerned science does not make new discoveries everyday. The latest products of light and heavy industries do not come to their market; why? Because they live by instinct, and not by reason.

But the social life of human beings is always subject to change. Every century, the world is changed. There lies the secret of man's being the prince of creation. Human being is the mature and worthy child of nature. He has reached a stage, where he does not require the direct guidance of that mysterious force which is called instinct.

Nature recognises that man is mature, and that is why it has left him free. What an animal accomplishes by its instinct and by following inviolable natural laws, human beings should accomplish by one's intellect and knowledge, and by following the viable enacted laws.

Man, being the master of his own destiny, can always deviate from the path of progress, and there lies the secret of his slips, setbacks, lapses and failures.

Just as the way to progress and advancement is open to him, the way to corruption, perversion and failure is also not closed.

Human beings have reached such a stage that, in the words of the Qur'an, they can shoulder that trust which the heavens, the earth and the mountains could not carry. In other words, they can lead a free life and can accept legal, professional and other responsibilities. That is the reason why they are not immune to mistakes, selfishness, ignorance and injustice.

Where the Qur'an refers to this wonderful human capacity, it also immediately describes man as 'unjust' and 'ignorant'.

These two human capacities - the capacity of evolution and the capacity of deviation, are inseparable. Man is not like an animal which, in its social life, goes neither forward nor backward. It turns neither to the right nor to the left. On the other hand, man, in his life, sometimes goes forward and sometimes backward. In human life if there is motion and speed, there is halt and pause also. If there is progress and evolution, there is corruption and perversion, too. If there is justice and virtue, there is injustice and aggression also. If there are manifestations of knowledge and wisdom, there are manifestations of ignorance and base desires, too.

It is possible that the changes which take place and the new phenomena which appear, may be of the latter category.

THE RIGID AND THE MISINFORMED

It is one of the characteristics of man that he sometimes overacts and sometimes underacts. If he adopts the middle course, he endeavours to differentiate between the changes of the right type and that of the wrong type. He endeavours to push time forward with the help of his knowledge and creative power, and to identify himself with the manifestations of progress and advancement. He also tries to arrest perversion, and not to associate himself with it.

But unfortunately, man does not always adopt this course. He is liable to be afflicted by two dangerous diseases, the disease of rigidity and the disease of ignorance. The first disease results in stagnation and abstention from progress, and the second in perversion and ruin.

The rigid is averse to everything new and cannot reconcile himself with anything, except the old. On the other hand, the misinformed regards everything new to be modern and progressive and considers it to be the requirement of time. To the rigid, every new development means corruption and perversion, whereas to the misinformed, all new developments indiscriminately mean the expansion of culture and knowledge.

The rigid does not distinguish between husk and kernel and between the means and the end. In his opinion the duty of religion is to preserve all that is obsolete and antiquated. He thinks that the Qur'an has come down to arrest the motion of time and to nail down the world conditions as they were.

According to this view, old and outdated customs, such as to begin reading, from the last part of the Qur'an, writing with a reed-pen, using a cardboard inkstand, washing in the tank of the Turkish bath, eating with the hands, burning an oil lamp, and remaining illiterate, are

religious rites which must be preserved. In contrast, the misinformed keeps his eyes fixed on the Western world to be able to imitate every new fashion and every new custom. He calls this modernity and the compulsion of time.

Both the rigid and the misinformed suppose that all old customs and usages are a part of religious rites, with the difference that the rigid wants to preserve them, whereas the misinformed may conclude that religion is tantamount to stagnation and inertia.

During the past few centuries, the question of contradiction between religion and science has been much debated among the people of the West. The idea of contradiction arose from two developments. Firstly, the Church had accepted some ancient, philosophical and scientific notions as religious beliefs, but the progress of science has proved their falsity. Secondly, science has changed the form and the conditions of life.

The rigid, who are apparently religious, want to make the external form of the material life a part of religion, just as they have unnecessarily given religious colour to some philosophical questions.

The uninformed and the misinformed people are also under the impression that religion has prescribed a particular form of material life, and as science has decreed a change in this form, religion should be abolished.

The rigidity of one group, and the ignorance of the other, have brought into existence the fictitious idea of contradiction between science and religion.

A PARABLE OF THE QUR'AN

Islam is a progressive religion and wants its followers to be progressive. The Qur'an has employed a parable to persuade the Muslims to keep marching forward, under the light of Islam. It says that the followers of Prophet Muhammad (P) are like a seed which is sown in the soil. First, it shoots out in the form of a tender seed leaf, then it grows stronger and stronger till it stands on its own stalk. It grows so rapidly that it causes great surprise to the farmers.

It is an analogy of the society which the Qur'an aims at. What the Qur'an desires is growth. The Qur'an wants to lay the foundation of a society, which should always be growing, developing and expanding.

Will Durant says that no religion has called upon its followers to gain strength as Islam has done. The history of early Islam shows how powerful a force Islam is to rebuild a society and to push it forward.

Islam is opposed to both rigidity and ignorance, and regards both of them as dangerous. The intellectual sterility of the rigid and their clinging to the old customs having no connection with Islam, have provided a pretext to the misinformed to consider Islam to be really opposed to modernity. On the other hand, the following and patronising of the latest fashions and modes of the West by the misinformed, their belief that the prosperity of the people of the East depends on their complete westernization, both physically and spiritually, their acceptance of the habits, manners and traditions of the West, and the blind adaptation of their own civil and social laws to those of the Western nations, have provided a pretext to the rigid to look at everything new with suspicion and to regard it as a threat to their religion, to their independence and to the social personality of their community.

In the meantime, Islam has to pay the penalty for the mistake of both the parties.

The rigidity of the rigid has left the field open to the misinformed to play havoc, and the ignorance of the misinformed has made the rigid more stubborn in their beliefs.

It is surprising that these so called cultured, but really ignorant people, think that time is infallible. The fact is that all changes are brought about by man, and man is not infallible at all. Then how can it be presumed that the changes of time must necessarily be free from error.

Just as man has scientific, moral, aesthetic and religious inclinations, and constantly takes new measures for the benefit of humanity, he has certain negative tendencies also. He is selfish, power- hungry and pleasure-seeking. He loves money and exploitation. Just as he is capable of making new discoveries and finding better ways and means of doing things, he is liable to commit mistakes also. But the misguided and misinformed do not understand these things. They simply go on harping on the same tune and repeating that the modern world is like this, and like that.

What is more surprising is that they compare the principles of life to such things as a shoe, a cap and a dress. As these things are sought after when they are new, and thrown away when they get old and worn out, the same, according to them, should be the case with universal truths. To them, good and bad has no sense other than that of new and old. Feudalism is bad only because it has become old and has gone out of fashion. Otherwise, it was quite good when it was first introduced into the world.

Similarly, exploitation of women is bad only because it is disliked by the modern world; otherwise, till recently, these same people had not given her a share of inheritance. They had not recognised her right of ownership, and had not respected her will or views.

According to such people in the present age, being the space age, just as it is no longer possible to ride a donkey and leave aside the aircraft, light an oil lamp and not to use

electricity, use a hand-spinning mills, and to write with hand and leave aside gigantic printing machines, it is not possible not to attend dance parties, swimming-costume parties and barbecue dinners, not to take part in merry-making, not to play poker and not to wear mini-skirts, for all these things are the phenomena of the present century. If they do not indulge in such things, they fear that they will go back to the days of donkey-riding.

They assert that this is the atomic age, the age of science, the age of the artificial moons and the age of ballistic missiles. That is very good! We also thank God that we are living in this age, and wish that we may be able to enjoy the benefits of science and industry to the utmost. But have all the springs, except that of science gone dry in this age? Are all the phenomena of this century an outcome of the modern scientific progress? Does science claim that it has brought nature under its complete control?

Science makes no such claim. The tragedy of our century is that a group of scientists, with good intentions, applies itself to making new discoveries, but another group of selfish and power- hungry opportunists and money-worshippers misuses the fruit of the scientists' labour to achieve its own questionable ends. Science complains constantly that it is misused by stubborn human nature and this is the misfortune of our age.

Science moves forward in the field of physics and discovers the laws of light and reflection, and an opportunist group uses them for the preparation of blue films of a hostile and destructive nature. Chemistry makes progress and discovers the properties of various substances and their combinations. Then certain individuals exploit this discovery for the preparation of heroin, which is a curse to humanity. Science found its way into the inside of the atom and brought a wonderful source of energy under its control, but before it could be used for the benefit of mankind, the power-hungry people hastened to make the atom bomb, and to drop it on innocent people.

When a reception was arranged in honour of Einstein, the great scientist of the 20th Century, he himself mounted the rostrum and said: "Do you honour the man who has been instrumental in the making of the atom bomb?"

Einstein himself did not exercise his knowledge for its making. It was others, who harnessed his discoveries for this purpose.

The use of heroin, the atom bomb and the blue films cannot be justified on the ground that they are among the phenomena of the present century.

If the latest type of bombers are used for throwing the most perfect bombs on the people of another country, and the most highly educated people are employed to perform this job, can all this modernity reduce the inherent barbarity of the act?

ISLAM AND MODERN LIFE -III

The main argument of those, who say that in the matter of family rights we should follow the Western system, is that times have changed, and the requirements of the 20th century demand that we should do so. We propose to make our views on this point clear, because without doing so, the discussion of any other point will remain incomplete, though, owing to the limitation of space, it is not possible to discuss the question from all its philosophical, legal, social and moral angles. For the present purpose, it is enough to make two points clear:

The first point is that the harmony in and conformity to the changes of time is not such a simple question as some misinformed people think. The changes, brought about by time, are sometimes progressive and sometimes retrogressive. We should march forward along with the progressive changes, and should fight the retrogressive tendencies. To distinguish between these two kinds of changes and to determine their nature, we should find out the source of the new developments, and which way they are directed to. We should see what human tendencies have brought them into existence, and which classes of society are behind them. We should see whether they have been motivated by high human tendencies or by low animal propensities, and whether they have come into existence as a result of selfless investigations of scholars and intellectuals, or have been motivated by the base desires of self-seekers and the corrupt elements of society.

THE FLEXIBILITY OF ISLAMIC LAWS

The second point, to be made clear, is that the Muslim thinkers believe that Islam has certain potentialities which have made it applicable to all times. According to these thinkers, Islamic teachings are in harmony with the progress of time, the expansion of culture and the resulting changes. Let us see what is the nature of the potentialities which Islam has. In other words, let us see what devices have been put into the structure of this religion, and whether they have given it the characteristic of being in harmony with all the changing situations, without there being any need of dropping any of its teachings and without any conflict taking place between its teachings and any situation arising out of the expansion of knowledge and civilisation.

Although this question has a technical aspect, in order to remove the misunderstanding of those who doubt that Islam has any such characteristic, we briefly deal with it here.

For further discussion of the subject, the readers may refer to Tanbihul Ummab by the late Ayatullah Naini, or to the Marjaiyyat Wa Imamat by the great contemporary scholar, Allamah Tabatabai. Both the books are, however in Persian.

There are many points, which form the secret of Islam being in harmony with the expansion of knowledge and civilisation, and the applicability of its firm and stable laws to the varying circumstances of life. We mention here only a few of them.

EMPHASIS ON SPIRIT AND INDIFFERENCE TO FORM

Islam has not dealt only with the external form of life, which depends upon the degree of the development of human knowledge. Islamic teachings are concerned also with the spirit and the goals of life, and determine the best way to reach these goals. Science has neither changed the spirit and the goals of life, nor has it suggested any better, shorter and safer route to reach them. It has only provided better means and facilities to traverse the way to those goals.

Islam, by keeping only goals within its domain and leaving the form and means to the domain of science and technology, has avoided any clash with culture and civilisation. Not only that, but by encouraging the factors helping the expansion of civilisation, namely, knowledge, labour, piety, will, courage and perseverance, it has undertaken the role of the main factor working for the cause of the expansion of civilisation.

Islam has set up traffic signposts all along the route of human progress. They, on the one hand, indicate the route and the destination, and, on the other, warn against pitfalls and dangerous spots. All Islamic laws are posts, either of the first kind or of the second.

The means of life in every age depend on the degree of the sum total of human knowledge. As human knowledge expands, more perfect means of life come into existence, and automatically take the place of the imperfect ones.

The external and material forms of these means have no sanctity in Islam, and the Muslims are not bound to preserve them forever.

Islam has not said that such and such tools are to be used for the purpose of tailoring, weaving, cultivation, transport, war or any other jobs. Hence, there can be no question of any conflict between science and Islam, in case any tools or implements become obsolete. Islam has not prescribed any particular design of shoes or dress, nor has it suggested any particular style of construction for buildings. Similarly, it does not insist on any particular methods of production and distribution.

This is one of those aspects of Islam, which have facilitated its applicability to all the developments of time.

STABLE LAWS FOR STABLE REQUIREMENTS AND VARYING LAWS FOR VARYING REQUIREMENTS

Another characteristic of Islam, which is of great importance, is that it has envisaged stable laws for the stable human requirements and varying laws for the varying requirements. A part

of the human requirements, both individual and collective, is of a permanent nature. They do not undergo any change with the change of time. The principles of the systems regulating human instincts and social relations always remain uniform.

We are aware of the theories of the "Relativity of Morals" and the "Relativity of Justice" which have their supporters, and would express our views with regard to them, later.

Another part of the human requirement is of a varying nature and this demands varying laws. Islam has visualised such requirements, and has linked them with certain principles which have subordinate laws for every changed situation.

To elucidate this point, I give a few examples:

Islam has laid down a social principle which has been stated in the Qur'an thus: *Provide force against them (the enemies) to the utmost possible extent* (Surah Anfal, 8 : 60). At the same time, a number of traditions of the Holy Prophet handed down to us, are mentioned in the books of Islamic law under the heading 'Horsemanship and Archery'. The Prophet directed that the Muslims should learn the arts of horsemanship and archery and teach them to their children. These arts were a part of military science in the ancient days. It is quite obvious that the basic order is 'to provide force'. Bow and arrow, sword and lance and mule and horse are not important. What is important is to be militarily powerful against the enemy. To acquire skill in horsemanship and archery is only a form of acquiring military strength, or a way of implementing the basic order. To provide strength is a standing law which has sprung from a permanent need.

However the necessity of acquiring skill in horsemanship and archery is a temporary requirement, which varies with the change of time. With the changed circumstances, skill in firearms etc. has taken the place of skill in archery.

Another example is the social principle concerning the exchange of wealth, mentioned in the Qur'an. Islam has recognised the principle of individual ownership. However, the ownership as recognised by it is different from that found in the capitalist world. A characteristic of the individual ownership in Islam is the principle of exchange.

In this connection, Islam has laid down certain rules. One of them has been enunciated by the Holy Qur'an in these words. *And do not consume each other's wealth in vain.* (Surah al-Baqarah, 2 : 188). In other words, in the case of business transactions, money must not pass from one hand to another, except in exchange for some lawful return which has a recognised value. Islam does not admit that ownership is equivalent to absolute authority.

It is specified in the Islamic law that the sale and purchase of certain things is forbidden. Such things include blood and human excreta. The reason is that these things do not have such a

value that they should be considered to be a part of human wealth. The underlying principle is the same as contained in the above quoted verse. The invalidity of the sale and the purchase of blood and human excreta is only an instance of the application of that principle. Even where no exchange is involved, money or property belonging to someone else cannot be appropriated and disposed of gratuitously.

The law forbidding the appropriation of another's property gratuitously is a firm principle which is applicable to all time, and has emerged from a permanent social need. But the rule that blood and excreta are not to be regarded as wealth and are not saleable is related to time and the degree of civilisation. This rule is subject to modification with the change of conditions, the progress of science and industry and the possibility of the correct and useful utilisation of these items.

Another example: Imam Ali (peace be on him) never dyed his hair, though it had become grey during the last years of his life. One day a man said to him: "Didn't the Prophet order grey hair to be covered with dye?" 'Yes, he did", Ali replied. "Then why don't you dye your hair?" the man asked. Ali said "At the time the Prophet gave that instruction the number of the Muslims was small, and there were many aged people who used to take part in the battles. The Prophet ordered them to dye their hair to conceal their real age, for if the enemy could see that he was faced with only a bunch of old men, his morale might have been raised. With the spread of Islam to the whole world, that situation has changed. Now every body is free to dye, or not to dye, his hair".

In the opinion of Imam Ali, the Prophet's instruction was not a basic and permanent law. It was only a way of implementing that law, which says that we should not do anything which might raise the morale of the enemy.

Islam attaches importance to the external appearance., as well as to the inner spirit. But it wants the husk only for the sake of the kernel, and the garb only for the sake of the body.

THE QUESTION OF THE CHANGE OF SCRIPT

Recently in Iran, there has been a controversy about the change of script. This question can be considered from two angles from the point of view of the Islamic principles, and in two forms. The first is whether Islam favours any particular alphabet and discriminates against others. Does it regard the present alphabet, known as Arabic, as its own and others such as Latin as alien? Islam which is a universal religion considers all the alphabets of the world as equal.

The second form of the question is how far the change of script will lead to the cultural merger of a Muslim nation with the other peoples, and what effects will it produce on the culture of this nation? After all, during the past 14 centuries, the Islamic and scientific

literature produced by Iran has been recorded in the present script. With the change of script, will not all connections with this literature be severed? Another question is: "Who are the people who propose this change, and who will be the people who are going to implement it?" All these questions are relevant.

DEPENDENCE ON OTHERS IS FORBIDDEN NOT THE EUROPEAN HAT

People like me are often faced with such questions, asked contemptuously and sarcastically. "What does Islamic law say about eating food while standing?' "What about eating food with a spoon and a fork?" "Is the wearing of the European hat forbidden?" "Is the use of a foreign language forbidden?"

Answering such questions, we say: Islam has not given any particular instructions in this respect. Islam has not directed its followers to eat food with the hand or with a spoon. It has directed them only to observe cleanliness. Islam has not prescribed any particular design of shoes, cap or dress. From the Islamic point of view, the English, Japanese and Persian (languages) all have just the same status.

However, Islam has said something else also. It has said that to lose one's identity is forbidden. To be over-awed needlessly by others is forbidden. Mimicry is forbidden. To be merged with others is forbidden. To be charmed by others, as a hare is charmed by a snake, is forbidden. To consider an alien dead donkey to be a mule is forbidden. To import their perversion and immorality, in the name of a phenomenon of the 20th century, is forbidden. To believe that the Muslims should be westernised internally and externally, physically and spiritually, is forbidden. To go to a Western country for a few days and on returning, to start pronouncing our own words in their way is forbidden.

IMPORTANT AND MORE IMPORTANT

Another aspect of Islam which makes it compatible with the requirements of the time is the conformity of its teachings to reason. Islam has proclaimed that its laws are based on considerations of higher interest. At the same time, Islam itself has given out the degree of importance of these interests. This facilitates the work of the experts of the Islamic law in those fields where various interests appear to be in contrast with each other.

In such cases, Islam has allowed the experts of Islamic law to weigh the relative importance of the various interests, and keeping in view the guidance which Islam itself has provided, to determine the more important interests. In Islamic jurisprudence, this rule is called the question as 'important and more important'. There are many instances where this rule of high and higher interests has been applied. Anyhow, for lack of space we skip over them.

THE LAWS WHICH HAVE A RIGHT OF VETO

Another aspect of Islam which has given this religion the characteristic of mobility and applicability to varying circumstances, and has kept it as a living and everlasting religion, is that within it there exists a body of laws whose object is to control and modify other laws. They are called by the jurists, 'the governing rules'.

The rule of "No harm" and "No loss", that a law will not apply to those cases in which it may cause hardship or harm the interests of an innocent person, pervades the entire legal system. The object of such rules is to control and modify other laws. In fact Islam has given a veto power to these rules which change other rules.

POWERS OF THE RULER

In addition, there is a further series of checks and balances which has given this religion the characteristic of finality. Ayatullah Na'ini and Allama Tabatabai have, in this respect, mostly relied on the powers delegated by Islam to the righteous Islamic Government.

THE PRINCIPLE OF IJTIHAD

The Pakistani poet and philosopher, Iqbal, says that *Ijtihad* (the deducing of laws from their original sources) is the motivating force of Islam. He is right in saying so. But what is more important is that Islam has a special quality of being amenable to *Ijtihad.* No other religion possesses this quality in the same manner. The internal structure of Islam has been so designed that, with the aid of *Ijtihad,* it can always cope with the ever-changing pattern of the requirements of life.

Abu Ali Sina (Avicenna) in his book, Al-Shifa, has based the need of *Ijtihad* on this very principle of ever-changing requirements. He says that conditions of life change constantly. New problems frequently crop up, but the fundamentals of Islam are constant and unalterable. Hence, in these circumstances, there should be some people who, with their full knowledge of all the points of law and precepts, may be able to answer all the questions which may arise from time to time, and thus meet the needs of the people.

The constitution of Iran provides that a body consisting of not less than five Mujtahids (eminent scholars of theology, capable of practising Ijtihad) should keep a watch on the laws enacted by the State from time to time.

The idea is that such people, as are neither rigid and opposed to the modern developments, nor uninformed, blindly following others, should keep a watch on the legislative activity of the country.

It is worth mentioning that *Ijtihad* in the real sense means specialisations and requires a deep insight into the fundamentals of Islam and a thorough knowledge of the principles of Islamic jurisprudence, which naturally cannot be claimed by everyone who might have passed some time in an Islamic academy.

No doubt, it is a lifetime job to specialise in the principles and precepts of Islam, and it requires Divine help besides a taste, a talent and a special aptitude.

Apart from specialisation and *Ijtihad*, some people may acquire knowledge to the extent that their views may be regarded as authoritative. Such people must be pious and God-fearing to the utmost extent possible. The history of Islam mentions those people who, despite their vast knowledge and high morals, were cautious and fearful when they expressed their opinions, on points of law.

BACK NEXT

Woman in Qur'an

Now we propose to answer the question whether Islam regards woman equal to man as a human being, or regards her inferior to him.

THE SPECIAL PHILOSOPHY OF ISLAM IN RESPECT OF FAMILY RIGHTS

With regard to the rights of man and woman, Islam has a special philosophy of its own which differs from what happened 1400 years ago and what is happening now. It does not believe that in all cases man and woman have the same rights and obligations. In certain cases their rights and obligations are different, with the result that in certain cases their position in this respect is similar, and in certain others dissimilar.

This is not because Islam, like some other schools of thought, looks at woman contemptuously or considers her to belong to an inferior sex. Islam differentiates between the two sexes for some other valid reasons.

You might have heard that the followers of the Western systems refer to the Islamic rules of dower, maintenance, divorce, polygamy and the like in a way, as if they were insulting to woman and derogatory to her position. They mislead the people into the belief that these rules are unreasonable and clearly in favour of man.

They say that during the entire period of history, prior to the 20th century, all laws and rules in the world were based on the presumption that man belonged to a superior sex and that woman was created for his benefit and enjoyment. The rights accorded by Islam also revolve round man's interests, and are no exception to the general rule.

They assert that Islam is the religion of the male sex. It does not recognise woman to be a full human being. That is why it has not accorded her equal rights. Had it recognised her as a full human being, it would not have allowed polygamy; it would not have given man the right of divorce; it would not have considered the evidence of two females equal to that of one male; it would not have fixed the share in inheritance of a female as half of the share of a male; it

would not have ordered the naming of a price for woman under the name of dower, and would not have made woman dependent on man for maintenance, instead of making her economically and socially independent. The Islamic teachings in all these cases show that Islam looks at woman contemptuously. Islam claims to be a religion of equality but, at least in the case of family relations, no equality has been observed by it.

They maintain that in the matter of rights, Islam gives a clear preference to man, and that is why it has given all these concessions to him.

If we like we can put their argument into a logical form thus: Had Islam considered woman to be a full human being, it would have accorded her rights similar and equal to those of man; but as it has not done so, it does not consider her to be a full human being.

EQUALITY OR SIMILARITY?

This argument is based on the ground that human dignity being common to man and woman, they both must enjoy the same rights. In this connection, the point worth considering is whether on the basis of human dignity they both should have equal rights without any discrimination, or should have the same rights irrespective of their different roles in life. No doubt, human dignity being common to them, they both should have equal rights. But how about the similarity of their rights?

If, instead of blindly following the Western ideas, we allow ourselves some independent thinking, the first question which comes to mind is whether equality of rights does really mean their similarity also. In fact, they are two different beings. Equality means a condition of being equal in degree and value, whereas similarity means uniformity. It is possible that a father may distribute his wealth among his three children equally, but not uniformly. Suppose his wealth consists of several items such as a commercial store, some agricultural land and some property, which has been leased out. He, taking into consideration their respective tastes and aptitudes, gives the store to one, the agricultural land to another and the leased property to the third. He takes care that what he gives to each of them should be of fair value, and at the same time should suit their aptitude. Thus he distributes his wealth equally, but not uniformly.

Quantity is different from quality, and equality is different from uniformity. Islam does not believe in uniformity between man and woman. But at the same time it does not give preferential treatment to men, in the matter of rights. It has observed the principle of equality between man and woman, but it is opposed to the uniformity of their rights.

Equality is a charming word, for it implies a sense of indiscrimination. A particular sanctity is attached to it. It evokes respect, especially when it is associated with rights.

What a beautiful and sacred construction 'equality of rights' is! Any conscientious person is bound to succumb to its charm.

But we cannot understand how things have got to this extent that others who have once been the standard bearers of science and philosophy want to impose their ideas about the similarity of rights between men and women on us.

This is exactly as if a person sells boiled beets and gives to them the name of pears.

No doubt, Islam has not in all cases accorded similar rights to man and woman. But it has not also prescribed similar duties and similar punishments for the two sexes. Anyway, the total value of the rights accorded to woman is not less than that of the rights accorded to man. We propose to prove this point.

Here the question arises as to what is the reason that in certain cases dissimilar rights have been accorded to man and woman. Would it not have been better, had their rights been similar, as well as equal in all cases? To give full consideration to this point, we propose to discuss it under three headings:

(i) The Islamic view of the position of woman from the angle of her nature.

(ii) The effect of the physical disparity between man and woman. Does it make them dissimilar in the matter of rights also?

(iii) What is the philosophy behind the Islamic rules, which are in some cases different in respect of man and woman? is this philosophy still valid?

THE POSITION OF WOMAN IN THE ISLAMIC SCHEME

The Qur'an is not merely a collection of laws. It is not a body of dry rules and laws with no explanation of their ultimate aims. it contains laws, as well as history, religious exhortations, an explanation of the meaning of Creation, and thousands of other things. At certain places it sets forth a course of action in legal form, and at others it explains the meaning of existence. It unravels the mysteries of the earth, the heavens, the plants, the animals and the human beings. It gives out the secrets of life and death, honour and disgrace, rise and fall, wealth and poverty.

The Qur'an is not a book of philosophy, but it has expounded, in very definite terms, its views on the three basic subjects of philosophy: the world, man and society. It does not teach its followers law alone, and does not indulge in mere exhortation and admonition, but, also by its interpretation of Creation, gives its followers a special outlook and a peculiar way of thinking. The basis of the Islamic regulations regarding social matters like ownership, government,

family rights etc. are its very interpretation of Creation and various things.

One of the subjects explained in the Qur'an is that of the creation of man and woman. The Qur'an has not observed silence in this respect. It has left no opportunity to the philosophical meddlers to invent their own philosophy for the rules concerning man and woman, and to describe them as being based on Islam's contemptuous attitude towards the fair sex. Islam has itself given its views regarding woman.

To know the views of Islam on woman, we should see what the Qur'an says about her innate character. Other religions also have referred to this question, but it is the Qur'an alone which in a number of verses expressly says that woman has been created of the species of man, and both man and woman have the same innate character. While referring to Adam it says: *He (Allah) made all of you from one being, and from that being He made its mate.* (Surah an-Nisa, 4 : 1)

With regard to mankind in general, it says: *He made your mate from among you.* (Surah an-Nisa, Surah Ali Imran and Surah Rum).

Unlike some other religious books, there is no mention in the Qur'an that woman has been created of some inferior material, or that she has any parasitic and leftist aspect. Islam does not support the notion of the people who suppose that the spouse of Adam was created of his left ribs. Islam has no contemptuous view of woman in regard to her nature and innate character.

There is another contemptuous theory which was current in the past, and has left some undesirable traces in the world literature. According to it, woman is the cause of all sins. Her very existence stimulates evil. Woman is a little devil. It is said that woman has had a hand in every sin and every offence committed by man. Men themselves are free from sin; it is the women who drag them to it. It is also said that the Devil cannot have direct access to men. It is through women that he lures them. He prompts woman with wicked suggestions, and woman in turn prompts man. Adam was thrown out of Paradise because of a woman. The Devil misled Eve, and it was Eve who misled Adam.

The Qur'an has narrated the story of Paradise, but it says nowhere that the Devil or the Serpent misled Eve and Eve misled Adam. It neither blames Eve nor exonerates her.

The Qur'an says: *We said to Adam: 'Take residence in Paradise.' both you and your Spouse, and eat the fruits thereof, freely wherever you wish and go not near that tree else you become wrongdoers.* (Surah al-Baqarah, 2:35). It puts the pro. nouns in the dual form. It also says: *Then the Satan made a suggestion to them (both). Then he led them (both) on with guile. He swore to them (both): I am a sincere adviser to you (both).* Surah al-A'raf, (7 : 20 - 21)

Thus the Qur'an vehemently opposed the false notion which was current after the time of its revelation, and the echoes of which still resound in various parts of the world, It absolved woman from the charge that she was the prompter of sin, and herself a little devil.

Another contemptuous theory which has existed concerns woman's spiritual position. It was asserted that woman could not enter Paradise. She could not cover the spiritual and divine stages. She could not reach such a stage of proximity to God as man could. But the Qur'an, in a number of passages, has expressly said that the reward of the Hereafter and the proximity to Allah are not linked with sex. They depend on faith and deeds, and there is no difference between man and woman in this respect. In the Qur'an, side by side with every great and saintly man, a great and saintly woman has been mentioned. It has glorified the wives of Adam and Abraham and the mothers of Moses and Jesus. If it has mentioned the wives of Noah and Lot as unworthy of their husbands, it has not ignored the wife of the Pharaoh, and has mentioned her as a great woman who was in the hands of a wicked man. The Qur'an in its stories has maintained a sort of balance. Its heroes are both men and women.

While referring to the mother of Moses, the Qur'an says:

We made Our Will known to Musa's mother saying.' Put him in a box and throw it into the river. The waves shall cast him on to the bank. . . (Surah Taha, 20 : 39).

About the mother of Jesus, it says that she had attained such a high spiritual position that the angels used to talk to her while she was worshipping in the Sanctuary. She used to receive eatables from supernatural sources. Her sublime spiritual position caused bewilderment even to Zachariah, the Prophet of that period.

There have been many eminent and saintly women in the history of Islam. Few men can attain the high position of Khadija, the beloved wife of the Holy Prophet, and no man, except the Holy Prophet and Ali (P) can match with Zahra, the beloved daughter of the Holy Prophet. She holds a position superior to that of even her sons, who are Imams, and to that of the Prophets, other than the last one. Islam does not discriminate between man and woman in the matter of the 'journey towards Allah', but it regards man more suitable for shouldering the responsibility of Prophethood, which can be described as a 'return journey from Allah' to the people.

Another contemptuous theory that exists about woman is related to renunciation and celibacy. Certain religions regard sexual relations as a dirty thing. According to the belief of their followers, only those can attain higher levels of spiritual life who pass their whole life in celibacy. A well-known world religious leader says: "Cut down the tree of marriage with the axe of virginity." Such religious leaders tolerate marriage only as a lesser evil. In other words, they maintain that as most of the people are unable to lead a life of celibacy, and there is an apprehension that they will be unable to control themselves, and so will become involved in

illicit relations with a number of women, it is better that they marry so that they do not come into contact with more than one woman. These gentlemen advocate renunciation and celibacy because they look upon the fair sex with suspicion. They consider love for woman to be a great moral evil.

Islam is severely opposed to this absurdity. It reckons marriage as sacred and celibacy as dirty. To like woman has been described by Islam as a part of a prophetic character. The Holy Prophet has said: "I am interested in three things: perfume, woman and prayer".

Bertrand Russell says: "All religions other than Islam look at sexual relations with a pinch of suspicion. Islam, with an eye to social interest, has regulated and restricted them, but has not regarded them as dirty"

Another contemptuous theory with regard to woman, which has existed, is that woman has been created for the benefit of man.

Islam does not say any such thing. It has stated the purpose of Creation in clear terms. It expressly says that the earth, the heavens, the air, the clouds, the plants and the animals, all have been created for the sake of mankind. It does not say that woman has been created for the sake of man. According to it, both man and woman have been created for the sake of each other. The Qur'an says: *They (women) are raiment (comfort, embellishment and protection) for you, and you (men) are raiment for them.* (Surah al-Baqarah: 2 : 187).

Had the Qur'an stated that woman was a mere appendage of man, and was created for his sake, that view would certainly have been reflecte6 in the Islamic laws, but the Qur'an has expressed no such view. It does not explain Creation that way. It does not consider woman a mere appendage to man. That is why this view is not reflected in Islamic laws.

Another contemptuous theory about woman, which previously existed, is that woman is an inescapable evil. In the olden days, many people held her in great contempt and looked upon her as a source of misfortune and all sorts of trouble. In contrast, the Qur'an has emphasised that woman is a blessing for man and a source of his comfort and relief.

According to another contemptuous theory, little significance was attached to the role of woman in childbearing. Pre- Islamic Arabs and some other communities regarded woman just as a receptacle for keeping and developing the seed of man. The Qur'an in several of its passages has said, *We have created you from a man and a woman.* The same idea has been deduced from some other verses by the commentators of the Qur'an. Thus Islam has put an end to that wrong way of thinking.

It is clear from the above that Islam holds no contemptuous view of woman.

Now the time has come to see why there is a dissimilarity between the rights of man and woman.

SIMILARITY, NO AND EQUALITY, YES

We have already said that in respect of the family relations and the rights of man and woman, Islam has a special philosophy of its own which is quite different from what was the practice, 1,400 years ago as well as what is practised today.

We have also said that it is not a debatable point whether man and woman are equal or not, as human beings, and whether their family rights should or should not be of equal value. From the Islamic point of view they are both human beings and, as such, enjoy equal rights.

The point which is worth considering is that man and woman, because of the sex difference, are dissimilar in many respects. Their very nature does not want them to be similar. This position demands that they should not be similar in respect of many rights, obligations, duties and retributions. In the West an attempt is being made at present to make their rights and obligations uniform, and to ignore their natural and innate differences. There lies the difference between the Islamic view and the Western system. In our country, the point at issue between the supporters of Islamic rights and the supporters of the Western system, is the question of uniformity and similarity of rights and not that of equality of rights between man and woman. Equality of rights is only a label which has been wrongly attached to this Western gift.

The present writer, in his writings and speeches, has always refrained from using this false label and has never condescended to give the name of equality to what is actually the theory of similarity of rights. The pre-2Oth century Europe is a clear example of injustice to woman. Till the beginning of the 20th century the woman of Europe was deprived of human rights, both practically and legally. She had rights neither equal to, nor similar to, those of man. It is during the past decades that, as the result of a hasty movement, more or less similar rights have been granted to her, but she has not yet been able to secure equal rights in conformity with her natural position and physical and spiritual needs. If woman wants equality of rights and domestic happiness, she must discard the idea of similarity of rights. That is the only way of establishing cordiality between man and woman. In that case, man will not only accept her equality of rights, but will also be willing to give her, in some cases, more rights without any question of deceiving her.

Similarly, we do not claim that in a Muslim society woman actually enjoys rights equal to those of man. We have often said that it is essential that the position of woman should be reviewed, and the abundant rights which Islam has granted her and which throughout history have been denied to her, should be restored to her. Anyhow, we must not blindly imitate the Western way of life, which has produced catastrophic results in the West itself. What we

claim is that non-similarity of rights between man and woman, within such limits as are required by the disparity between their natures, is more in keeping with justice. It meets the requirement of natural rights better, ensures domestic happiness better and pushes society forward on the path of progress better.

It may be remembered that we claim that natural justice demands that, in certain cases, there should be a dissimilarity between the rights of man and those of woman. Being related to the philosophy of rights, this question has a hundred percent philosophical aspect. It is also connected with the principle of justice and equity, a cardinal principle of Islamic law and Islamic scholasticism. It is the principle of equity that has brought into existence the doctrine of conformity between reason and Divine law. According to the Islamic or at least the Shiah jurisprudence, if it is proved that equity demands that in a certain case the law should have a particular form, that very form will be the legal form irrespective of any other argument to the contrary, for according to the basic teachings of Islam the law must, in no case, infringe natural justice and basic rights. The Muslim scholars, by expounding the principle of equity, laid the foundation of the philosophy of rights, though following some unhappy historical events they could not continue the good work started by them. It was the Muslims who, for the first time, paid attention to the question of human rights and the principle of equity, and set them forth as original and self-existing principles unaffected by any contractual law. The Muslims were the pioneers in the field of the inherent natural rights.

But it was so destined that they could not continue their work and ultimately, after eight centuries, it was further developed by European intellectuals and philosophers, who appropriated the credit for it. The Europeans brought social, political and economic philosophies into existence, and acquainted the individuals, societies and nations with the value of life and human rights.

In our opinion, apart from historical reasons, there was a psychological and regional reason too, which prevented the Muslim-East from pursuing the question of inherent rights.

It is one of the differences between the spirit of the East and that of the West. The East is enamoured of morals and the West of rights. The man of the East is more sentimental and believes that he should be forgiving, chivalrous and philanthropic. But the man of the West thinks that as a human being he should know and defend his rights and must not allow others to violate them.

Humanity needs morals as well as rights. Humanism is concerned with both rights and morals. Neither of them alone is the criterion of high human qualities.

Islam has had and still has the big distinction of simultaneously paying attention to both the morals and the rights. In Islam sincerity, forgiveness and virtue are sacred moral qualities. At the same time consciousness of one's rights and the preparedness to defend them, are also

equally sacred and human.

Nevertheless, the Eastern spirit has been dominant with the Muslims, and consequently, though in the beginning both morals and rights engaged their attention, gradually the field of their activity became confined to morals.

Anyhow, at present we are concerned with the question of rights which may also be a philosophical question and needs to be dealt with at length. It is more closely related to the real meaning of justice and the true nature of rights - justice and rights which existed even when there was still no law in the world, and whose meanings cannot be changed by any law.

Montesquieu says: "Before laws were made by man, just human relations were possible on the basis of the laws which governed the relations among all existing things. It was the existence of these relations which led to the framing of laws. To say that prior to the framing of laws by man no just or unjust order existed to regulate human relations is tantamount to saying that before a circle is actually drawn its radii are not equal".

Herbert Spencer says: "Justice is interwoven with something other than feelings, namely the natural rights of human beings. We must respect the natural rights so that justice may have a practical existence".

Most of the European intellectuals are of the view that all declarations of human rights have been derived from natural rights. In other words, the theory of natural rights has assumed the form of the declarations of rights.

As we know, Montesquieu, Spencer etc. have said the same thing about justice as the scholastic philosophers of Islam have said about the rational basis of good and evil and the principle of equity. Among the Muslims there have been scholars who have denied the existence of inherent rights and maintained that justice was contractual. Similarly, among the Europeans also this belief has existed. The English philosopher, Thomas Hobbes denied justice as a reality.

DECLARATION OF HUMAN RIGHTS IS A PHILOSOPHY AND NOT A LAW

It is ridiculous to say that as the Universal Declaration of Human Rights, which guarantees equality of rights between man and woman, has been ratified officially by the Parliament of a particular country, men and women of that country are supposed to have equal rights.

After all, it is not within the jurisdiction of the Parliament of any country to ratify or reject the text of the Declaration, for its contents, not being of such contractual nature, do not fall within

its legislative authority.

The Universal Declaration deals with the inherent, inalienable and indefeasible rights of the human beings and, as claimed by the Declaration itself, these rights are an integral part of human dignity and have been determined by the powerful hand of nature itself. In other words, these rights have been granted to human beings by the same source which gave them intellect, will and dignity.

If it is so, the nature of the contents of the Declaration is such that a human authority can neither lay them down nor do away with them. Then how can the question of their ratification by a legislative body arise?

In fact, the Declaration of Human Rights is a philosophy and not a law. As such, it should be ratified by the philosophers and not by the legislators. No Parliament can, by debating and voting, lay down a philosophy. Otherwise, why should a bill enunciating Einstein's theory of relativity or the theory of the existence of life on some other planets not be introduced in some Parliament and passed by that august body? In reality, a natural law cannot be passed or rejected like a contractual law. To pass a natural law will be tantamount to the passing of a law to the effect that the grafting of a pear-tree on an apple-tree will be successful, but on a mulberry-tree it will not be successful.

Whenever any declaration of rights is issued by a group of philosophers, every nation should refer it to its own thinkers and philosophers, and if it is approved by them only then all members of that nation are bound to abide by its provisions as extra legal facts. The legislative authority will also be bound not to enact any law which is inconsistent with them.

But other nations will not be bound to observe them as long as it is not proved, according to their own view, that such a right exists in nature. Further, as this question is not subject to test and trial, it does not require any such equipment or laboratory etc. as may be available to the Europeans only. It is a question of philosophy whose tools are the brain, reason and an argumentative power.

Even if some other nations are compelled to follow the majority of other nations in the matter of logic and philosophy and do not feel that they are competent enough to do any philosophical thinking themselves we Muslims must not follow their example. We have shown in the past that we are highly capable of dealing with logical and philosophical questions. Why should we follow others today?

It is amazing that while the Muslim intellectuals attach so much importance to the principle of justice and inherent rights and accept as religious law, without any hesitation and without any further argument, all that stands to reason, today things have deteriorated to such extent that we want the members of a legislative body to ratify the acknowledgement of human rights!

PHILOSOPHY CANNOT BE PROVED BY FILLING COUPONS

More ridiculous than this is to try to decide the question of human rights by arranging the opinion polls of young boys and girls. Is it sensible to print coupons and ask young boys and girls to fill them, to find out what is the nature of human rights and whether they are of one or two kinds?

Anyhow, we want to study the question of woman's rights in a systematic and philosophical way, and in the light of inherent human rights. We would like to see whether the principles, which demand that all mankind should enjoy inherent and God-given rights, make it necessary or not that man and woman should have the same position in respect of their rights. We request the intellectuals, the thinkers and the lawyers of our country, who may be the only competent authority to express an opinion on such questions and to look into our arguments with a critical eye. We shall be highly obliged if they make authoritative comments in their favour or against them.

To deal with this question, it is necessary first to discuss the basis of human rights. The rights of man and woman will be discussed subsequently. In this context, it will not be out of place to refer briefly to the liberal movements of the past few centuries, which have led to the idea of equality between the rights of man and woman.

A BRIEF GLANCE AT THE HISTORY OF WOMEN'S RIGHTS IN EUROPE

The talk of human rights began in the 17th century. The writers and thinkers of the 17th and the 18th centuries, with great perseverance, gave publicity to their ideas about natural and indefeasible rights. Jean-Jacques Rousseau, Voltaire and Montesquieu belong to this group of thinkers and writers. The first practical result of the spread of their ideas was a long-drawn struggle between the rulers and the people of England. In 1688 the English people succeeded in making the King agree to grant them certain political and social rights advanced by them in the Charter, known as the Bill of Rights.

Another outstanding result of the spread of these ideas was the American War of Independence against England. Thirteen English colonies in North America revolted, following the imposition of heavy taxes, and eventually gained their independence. In 1776 a conference was held in Philadelphia which issued the Declaration of Independence. Its preamble said: "We hold these truths to be self-evident that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their justice power from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or

abolish it, and to institute a new government, laying its foundation on such principles and organising its powers in such form, as to them shall seem most likely to effect their safety and happiness".

As regards what is known as the Declaration of Human Rights, it was issued after the French Revolution. It contains certain universal principles which are considered to be an integral part of the French Constitution. The Declaration consists of a preamble and 17 clauses. The first clause says that all human beings are born free and remain free throughout their life. They are equal to one another in the matter of rights.

In the 19th century new developments took place and new ideas emerged in the field of human rights in economic, social and political matters. These resulted in the emergence of socialism, participation of the workers in the profits, and the shifting of the government from the hands of the capitalists to the labour.

Up to the beginning of the 20th century all discussions on human rights were centred upon the rights of the people versus the governments, or the rights of the labouring classes as against the employers and the landlords.

In the 20th century, the question of the rights of woman vis-a-vis those of man cropped up. It was only in the beginning of the 20th century that Britain, which is known as the oldest democracy, recognised the equality of rights between man and woman. Though the United States had, in general terms, recognised human rights in the 18th century in the course of the Declaration of Independence, yet universal suffrage was granted only in 1920. France also extended suffrage to woman only from the 20th century.

Somehow or the other in the 20th century large sections of people throughout the world came to support a deep change in the relations between man and woman, from the viewpoint of rights and obligations. According to them the purpose of social justice could not be achieved by change in the relation between the nations and between the workers and the employers and capitalists so long as the relations of man and woman with regard to their rights were not considered.

That is why the preamble of the Universal Declaration of Human Rights, issued by the United Nations in 1948, says:

"Whereas the peoples dignity of individual and equality of rights between man and woman...."

The crisis caused by the development of machines in the 19th and the 20th centuries, and the consequent pitiable condition of the workers, especially the female workers, focused the attention on the plight of woman and that is why attention was paid to the question of their

rights. A historian says: "As long as the governments did not pay attention to the plight of the workers and the behaviour of their employers, the capitalists did whatever they liked. The mill-owners used to employ women and children at very meagre wages and, as their working hours were too long, most of them suffered from various diseases and died at a young age".

This was the brief history of the Movement for Human Rights in Europe. As we know, all those clauses of the Declaration of Human Rights, which are new to the Europeans, had been visualised by Islam 14 centuries ago, and some Arab and Iranian intellectuals in their books have made a comparative study of the teachings of Islam and the provisions of these declarations. There still exists some difference between certain parts of these declarations and what Islam has taught. This is an interesting subject. For example, Islam accepts equality between the rights of man and woman, but it does not accept similarity or uniformity of their rights.

HUMAN DIGNITY AND HUMAN RIGHTS

"Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

"Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief, and freedom from fear and wants has been proclaimed as the highest aspiration of the common people".

"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

"Whereas it is essential to promote the development of friendly relations between nations".

"Whereas the people of the United Nations have in the Charter, reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, and have determined to promote social progress and a better standard of life in larger freedom".

"Whereas ... The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievements for all peoples and all nations, to the end that every individual and every organ of society, keeping the Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of member states themselves and among the peoples of territories under their jurisdiction...".

As we have observed earlier, every word and every sentence of this Declaration is well-calculated. It is a manifestation of the ideas of the world's liberal-minded philosophers and legists of several centuries.

IMPORTANT POINTS OF THE PREAMBLE OF THE DECLARATION OF HUMAN RIGHTS

This Declaration consists of 30 articles, though certain articles are superfluous and some points have been repeated in several articles.

The important points of the preamble are as under:-

(i) All human beings enjoy inherent dignity and inalienable rights.

(ii) Human dignity and human rights are universal and indivisible. They pervade all human beings irrespective of race, colour and sex. All human beings are members of a family, and hence none is superior to anyone else.

(iii) Full recognition of human dignity and inalienable human rights is the foundation of freedom, justice and peace.

The contents of the Declaration imply that the source of all the troubles, wars, acts of tyranny and barbarous acts committed by the individuals and the people against each other, is the non-recognition of human dignity and human rights. This non-recognition compels some to revolt against some others, and thus endangers peace and security.

(iv) The highest aspiration, for the materialisation of which all must strive, is the emergence of a world in which freedom of belief, security and material welfare may be ensured and freedom from suppression, fear and poverty may be guaranteed. The 30-article Declaration has been framed to achieve this purpose.

(v) Belief in human dignity and respect for inalienable human rights must be inculcated gradually in the minds of all, through teaching and education.

RESPECT FOR HUMAN DIGNITY

As the Declaration of Human Rights has been framed on the basis of respect for humanity, liberty and equality with a view to reviving human rights, it should be respected by every conscientious person. We, the people of the East have been believing in human dignity and respect for humanity for a long time. Islam attaches great importance to human dignity and

respects human rights, liberty and equality. Those who have really inspired them, deserve our appreciation. Anyhow, it is a philosophical text written by human hands, and not by angels. Hence, every philosopher has a right to analyse it and to point out its weak points.

The Declaration of Human Rights definitely has its weak points, but at present we have no intention to lay our finger on them. Instead; we point out its strong points.

The basis of this Declaration is the inherent human dignity, because of which man is entitled to certain rights which are not enjoyed by other living beings, for they lack that dignity. This is the strong point of the Declaration.

WESTERN PHILOSOPHY DEPRECIATES MAN

Here we are again faced with an old philosophical question:

What is the nature of the human dignity which distinguishes man from a horse, a cow and a pigeon?

It is here that the contradiction between the basis of the Declaration of Human Rights and the Western evaluation of man becomes evident.

The Western philosophy has since long depreciated man. The source of all that used to be said previously about man and his distinguished position was in the East. Now most of the European systems of philosophy ridicule all that.

Man, from the Western point of view, has come down to the position of a machine. The existence of a soul and the magnanimous origin of man have been denied. The belief that nature has an ultimate goal is considered to be a reactionary idea.

Now nobody in the West can talk of man as the crown of the creation. According to the current European theory, such a belief was only an offshoot of the now obsolete Ptole-maic astronomy, according to which the earth was believed to be the centre of the Universe and all the stars were believed to be revolving round it. Now that theory has gone, and, with its disappearance, no room is left for man to claim that he is the crown of the Universe. According to the Europeans, even in the past it was only because of his selfishness that man made this claim. Now man is a modest creature. He does not consider himself to be superior to other living beings. His life is only physical. After a man dies, his body is decomposed and there the matter ends.

The European does not believe that soul has any independent existence. In this respect he does not consider himself to be in any way different from a plant or an animal. According to him, there is no essential difference between the nature of man's intellectual and spiritual

capabilities and other properties of matter such as heat, emanating from coal. All these are various manifestations of energy and matter.

Life for all living beings, including man, means a constant struggle for existence. This is the basic principle of life. Man has always been striving to be victorious in this struggle, and to save his position he has invented such moral rules as justice, virtue, co-operation, sincerity etc.

From the standpoint of certain powerful Western schools of thought, man is just a machine which is actuated only by the motives of economic gains. Religion, morality, philosophy, science, literature and the arts are all superstructures. Their infrastructure is the mode of production and distribution of wealth which determines all aspects of human life.

Not only that, some western thinkers are of the view that sexual factors are the real motivating force behind all human activities. Morality, philosophy, science, religion and the arts are all modified and rarefied forms of sex.

We wonder how we can talk of human dignity and inalienable rights and how we can make them the basis of all our actions, if we deny that nature has any ultimate aim, if we think that the struggle for existence and the survival of the fittest are the only laws which govern life, if we believe that man is only a machine just like any machine made with human hands, if we maintain that the soul has no existence and all that is attributed to it is mere spiritual exaggeration, if we hold that either the economic or the sexual factors are the motivating force behind all human activities, if we assert that good and evil are only relative conceptions, if we are of the opinion that natural and intuitive inspirations are absurd and if we say that man is a slave of his desires and passions and can submit to force only.

Western views about man are contradictory to his dignity and have lowered his position from every angle - from the angle of the causes which have brought him into existence, from the angle of the purpose for which he has been created, his structure, his motives and his conscience.

Having done all this, the Western countries have proclaimed a high-sounding Declaration about human dignity and position and inalienable and sacred rights and have called upon mankind to enforce it.

The West, before issuing a high-sounding Declaration about sacred and natural human rights, should have revised its interpretation regarding man.

We admit that all Western philosophers do not hold the same views. Many of them think in this respect on the same lines as we do in the East. We have in view that way of thinking which has gripped most of the people in the West and which is now influencing the people all

over the world.

The Declaration of Human Rights should have been issued by those, who consider man to be higher than a robot, who think that his motives are not limited to his personal and animal instincts and who have faith in human conscience. The Declaration of Human Rights should have been issued by the people of the East who believe man to be the vicegerent of God on the earth. The Holy Qur'an says: *Surely I am appointing a vicegerent on the earth.* (Surah al-Baqarah, 2 : 30) Only those who believe that man has a goal and a destination can talk of human rights. *0 men! Surely you have to labour and labour toward your Lord, and then you shall meet Him.* (Surah al-Inshiqaq, 84 : 6)

The Declaration of Human Rights befits those systems which believe that man has a natural leaning towards virtue. *By the soul and Him who perfected it and inspired it with knowledge of evil and piety.* (Surah as-Shams, 91 : 7 - 8)

The Declaration of Human Rights should be issued by those who are optimistic about the nature of man. *Surely we have made man in the best proportion.* (Surah at-Teen, 95 : 4)

The Declaration of Human Rights does not befit the Western way of thinking. What befits it is only the practical behaviour of those Western people who kill all human sentiments, play with human characteristics, give preference to money over man, worship machinery, regard wealth as almighty and exploit other human beings. Capitalism has acquired such an unlimited power that if by chance a millionaire bequeaths his wealth to his dear dog, it is respected more than human beings, and several men serve it as its secretaries and clerks and show utmost respect to it.

Today's most important social question, in the words of the Holy Qur'an, is: Has man forgotten himself? He has not only forgotten himself, but has forgotten his God also. He has confined his attention to the material world and has totally ignored introspection. He thinks that he has lost his soul. This way of thinking is most disastrous, and may completely ruin humanity. Modern civilisation can produce everything of the highest grade, but it cannot produce a real man.

Gandhi says that the European deserves to be called the lord of the earth. He possesses all earthly resources and can do things which other nations believe only God can do. But there is only one thing which a European cannot do and that is introspection. That alone is enough to prove the futility of the glitter of the modern civilisation.

If Western civilisation has plagued the European with liquor and sex, it is because instead of seeking himself he is after forgetting and wasting himself. His practical ability to discover, to invent and to produce war material is due to his self-escape and not due to his exceptional self-control.

His fear of loneliness, his reticence and his pursuit of money have made him unable to listen to his internal voice. His inability to rule himself is his incentive to conquer the world. That is why the European spreads confusion and chaos wherever he goes. If one loses his own soul, it is no use conquering the world. Those who have been taught by the Gospel to be the missionaries of truth, love and peace, roam about in search of gold and slaves. Instead of seeking forgiveness and justice in the Kingdom of God, as the Gospel teaches, they use their religion only to absolve themselves from their sins. Instead of preaching the Divine message, they drop bombs on the innocent people.

That is the reason why the Declaration of Human Rights is being violated by the West. The philosophy which is followed by the people of the West in their practical life makes the failure of the Declaration inevitable.

Natural Postulates of Family Rights

We have said that man enjoys a sort of innate dignity. The very nature of his creation has bestowed on him a number of inalienable and untransferable rights and freedoms. This is the spirit and basis of the Universal Declaration of Human Rights.

Islam and the philosophies of the East support this spirit. What is inconsistent with the basis of the Declaration, is the way in which the various systems of Western philosophy interpret the origin and nature of man.

It is evident that the only authoritative source of the knowledge of human rights is the great and valuable book of nature itself. Only by referring to the pages of this great book can we find out the rights which are really common to all mankind, and also ascertain the comparative positions of the rights of man and woman.

It is amazing that certain simple-minded people do not recognise this great source. According to them, the only reliable source is the body of those few world-dominating people who had a hand in drafting this Declaration. Though they themselves practically may not adhere much to its contents but others have no right to dispute. But we, in the name of these very human rights, believe that we have a right to differ. In our view, the only authoritative source is nature itself which may be regarded as a divine book.

We seek the indulgence of the readers, because we have to raise certain questions which are somewhat philosophical and apparently dry. They may even be boring to some readers. We might have avoided such questions, but the subject of the rights of woman is so closely related to them that it is not possible to leave them out altogether.

THE RELATIONSHIP BETWEEN NATURAL RIGHTS AND THE AIMS OF NATURE

In our view, natural and inherent rights have arisen from the divine arrangement according to which the creative machinery, keeping in view its aims, is pushing forward all existing things towards that state of perfection, the capability of which is already hidden in their very making.

Every natural capability is the basis of one natural right and, at the same time, a natural authority for the implementation of that right. For example, every human child has a right to learn and to go to school, but a lamb has no such rights. Why is it so?

It is because a child has the capability of learning and growing wiser, which a lamb lacks. The creative machinery has put the authority for this right within the structure of man, but not in that of sheep. Similar is the case with the right of thinking, voting and having free will.

Some people think that the theory of natural rights and the idea that nature has accorded any special rights to human beings are preposterous and selfish claims. In fact, there is no difference in regard to rights between human beings and non-human beings.

But that is not the reality. Natural capabilities are different. Nature has put every species of all that exists in a particular orbit, and it can prosper only if it moves within its natural limits. The Creator has done so purposely, and this arrangement is not the result of any chance.

The basis of the family rights, which is the point under consideration, should be looked for in nature, like that of all other natural rights. If we look at the natural capabilities of man and woman, we can easily find out whether they should or should not have similar rights and obligations. It should be remembered, as already pointed out, that the controversial point is the similarity of their rights and not the equality of their rights.

SOCIAL RIGHTS

The position of human beings, in regard to their social rights other than family rights, is not always the same. In certain cases they enjoy similar rights, but in certain others they have dissimilar, but equal rights. In the society elementary rights are common to all. Everybody, for example, has a right to utilise his or her talents, to work and take part in the competition of life, to be a candidate for a social post and to secure it by lawful means, and to show his or her practical and intellectual worth.

But this very equality of all in regard to elementary rights puts them in an unequal position with regard to acquired rights. For example, everybody has a right to work and take part in the competition of life, but, as far as the actual performance of work is concerned, all cannot acquit themselves equally well. Some are more capable and others are less. Similarly, some are more efficient and some are less. Again, some persons are more knowledgeable, more competent, more efficient and more suitable than some others. Naturally their acquired rights cannot be similar. To try to make their acquired rights as similar as their elementary rights will be nothing but sheer injustice.

The reason why all human beings have equal and similar rights is that a study of human

affairs proves that nobody has been created a boss or a subordinate. Nobody is born a worker, an artisan, a teacher, an officer, a soldier or a minister. These various positions and grades are a part of acquired rights. Individuals have to acquire them in accordance with their ability, talent, effort and exertion.

Here lies the difference between the social life of human beings and that of such gregarious animals as bees The formations of the life of the latter are a hundred per cent natural. Various functions and duties have been distributed among them by nature itself. Some of them have been created chiefs, and others subordinates. Some of them are born as engineers, some as administrative officials and others as simple workers. But the story of the life of human beings is quite different.

That is why some intellectuals have entirely denied the old philosophical theory that man is social by nature, and have presumed that the human society is purely contractual.

FAMILY RIGHTS

This much was about non-domestic society. But what about domestic society? Do all the individuals in a domestic society also have a similar position in regard to their acquired rights, or is the case of the domestic society, which consists of wife and husband, parents and children and brothers and sisters different, and is there a special natural law in respect of domestic or family rights?

In this case there exist two presumptions. One of them is that the relations between wife and husband or between parents and children are like all other social relations. Their co-operation with one another is similar to that of a body of individuals, in national and governmental establishments. Such relations do not mean that some individuals inherently have any special position. It is only due to an acquired position that one is a boss and the other is a subordinate; one gives the orders and the other receives them; one has a higher monthly income and the other a lower. To be a husband or a wife or to be a father, a mother or a child also does not mean that everyone of them inherently holds a special position. It is their acquired status that determines their position in relations to each other.

The theory of the similarity of family rights between man and woman (wrongly called equality of rights) is based on this very presumption. According to this theory, man and woman take part in family life with a similar capacity, similar needs and similar inherent rights. Hence, their family rights also must be organised on the basis of similarity and likeness.

According to another presumption even their natural elementary rights vary. A husband as such has certain rights and obligations and a wife as such has certain other rights and obligations. The same is the case with a father, a mother and a child. In any case, the domestic

society is quite different from any other social organisation. It is this presumption, on which the theory of dissimilarity of family rights between man and woman is based and which has been accepted by Islam.

Now let us see which one of the above two presumptions is correct and how we can determine its correctness.

NATURAL POSTULATES OF FAMILY RIGHTS

To arrive at the right conclusion, the readers may keep in mind the following points already discussed in the preceding chapter:

(1) Natural rights have emerged from the fact that nature has a definite aim and, keeping that aim in view, it has invested all living beings with certain capabilities, and has bestowed on them certain rights.

(2) Man as such enjoys certain rights known as human rights, which are not enjoyed by animals.

(3) To know natural rights and their characteristics, reference should be made to nature itself. Every natural capability is an authority for a natural right.

(4) All human beings, as members of a civil society, have equal and similar natural rights, but they differ in regard to acquired rights which depend on their work, accomplishments and participation in the competition of life.

(5) The reason why all human beings in a civil society have equal and similar natural rights is that a study of human nature has made it clear that none of them is born as a boss or a subordinate, as an employer or as an employee, as a ruler or as a subject or as a commander or a mere soldier. The case of man is different from that of such gregarious animals as bees. Formations of life of human beings are not constituted by nature, nor has nature allotted various jobs and posts to individuals.

(6) The theory of the similarity of the family rights of man and woman is based on the presumption that the domestic society is just like any civil society. All members of a family live with similar capabilities and similar needs. Nature has bestowed on them similar rights. The law of creation has not fixed for them any particular formation, nor has it allotted them different duties and different roles.

As for the theory of non-similarity of family rights, it is based on the presumption that the case of the domestic society is different from that of a civil society. Man and woman do not have similar capabilities and similar needs. The law of creation has placed them in dissimilar

positions, and has visualised a distinct role for each of them.

Now let us see which of the two theories is correct, and why.

The issue can be decided easily if we use the criterion already mentioned and take into consideration the capabilities and needs of the two sexes, which form the natural authority for claiming natural rights.

IS THE FAMILY LIFE NATURAL OR CONTRACTUAL?

We have mentioned before that there are two views about the social life of man. Some believe that man is social by nature, whereas some others hold that social life is a contractual matter and this life has been chosen by man of his own accord under the influence of compelling factors. But these factors are external and not internal.

Anyhow, as far as the domestic life of human beings is concerned, more than one view does not exist. All agree that the domestic life is purely natural. Man is born domestic by nature. There can be no two opinions about this.

Even certain animals, like pigeons and some insects, which live in pairs, though they lead no social life at all, have a sort of conjugal life.

Hence, the case of domestic life is different from social life. Nature has taken measures to the effect that man and certain animals tend, by instinct, to lead a domestic life, form a family and have children.

The life of the ancient man, whether it has a matriarchal form or a patriarchal one, was always domestic.

THEORY OF FOUR PERIODS

In respect of ownership of property this fact is admitted by all that in the beginning the property was vested in the community and individual ownership was a later development. But that has never been the case with sex. The reason why ownership in the beginning had a socialistic aspect is that life at that time was tribal and the whole tribe formed one family. The members of the tribe, who lived together had joint-family sentiments. That is why the property was vested in the whole tribe. In the primitive society of the early periods there existed no law or custom which could determine the responsibility of man and woman to each other. It was only nature and natural feelings which made them adhere to certain duties and to respect certain rights. Even in these circumstances, they never indulged in unrestricted sexual relations. Those animals also which live in pairs, though they have no social and contractual

law, observe the natural law of rights and obligations, and as such their sexual life is not unrestricted.

Mrs. Mehr Angiz Manuchehriyan in the preface of her book, "Comments on the Constitution and Civil law of Iran" says:

From a sociological point of view, the life of man and woman in different parts of the world is passing through one of the following four stages:

(1) Natural stage

(2) Stage of the domination of man

(3) Stage of the protest by women and

(4) Stage of the equality of rights between man and woman. She further says that in the first stage man and woman mix with each other without any restriction.

Sociology does not accept this view at all. What sociology recognises, at the most, is that it is customary among certain primitive tribes that several brothers jointly marry several sisters and all the brothers cohabit with all the sisters. The children belong to all of them, jointly. Another custom is that the boys and the girls, before they are married, have no restrictions. It is marriage alone which places restrictions on them. These are only two known customs. Anyhow, if there is any primitive tribe which goes beyond these limits and allows more unrestricted sex relations its case is exceptional and abnormal.

Will Durant in his book, "History of Civilisation", Vol. I, says: "Marriage is an invention of our animal ancestors. Among certain kinds of birds it appears to be a fact that each bird keeps itself confined to its mate. Among gorillas and orangutans contact between a male and a female continues till the new-born grows up. In many respects this contact resembles the relation between a man and a woman. Whenever a female tries to get close to another male, she is severely rebuked by its mate. The orang-utans of Borneo, live in families consisting of a male, a female and the young. It is usual, with the gorillas, that father and mother sit under the trees and eat fruit while their young ones romp on the trees around them. The history of conjugality is older than the appearance of man. There are few societies where conjugality does not exist. Anyhow, if one tries he may find a few of them".

What we mean to emphasise is that the family feelings are natural and instinctive with human beings, and are not a product of civilisation and habit. Many animals also instinctively have such feelings.

That is why, at no time in history have human males and females lived together without any

restriction and restraint. Even those who claim the existence of financial communism in the primitive stages do not claim the existence of sexual communism.

The theory of the four periods of relations between man and woman is only a puerile imitation of the four periods of ownership, in which the socialists believe. They hold that in regard to ownership man has passed through four stages: the stages of primitive socialism, feudalism, capitalism and scientific socialism, which is a return to the primitive socialism on a higher level.

It is gratifying that Mrs. Manuchehriyan calls the fourth period of the relations between man and woman the period of equality in rights, and does not call it a return to primitive socialism. Here, she has not followed the example of the socialists, though she maintains that there is much in common between the fourth period and the first period. She says that the fourth period resembles the first period to a great extent, because, in both of them, man and woman live together without either of them exercising any authority or superiority over the other.

We are still unable to understand what she means exactly by saying 'resembles to a great extent'. If she means that during the fourth period all restrictions will gradually disappear and family life will be abrogated, then what she means by equality of rights, of which she is an enthusiastic supporter, is quite different from what the other supporters of equality of rights demand, and the idea may even be disgusting to them.

Now let us turn our attention to the nature of the family rights of man and woman. In this connection, we must keep two points in mind. One is whether or not the nature of woman is different from that of man. In other words, whether the difference between man and woman is confined to their r~ productive system, or goes deeper than that.

The second point is that in case there are other differences also, whether these differences are such that they do affect their rights and obligations, or they are of the kind of difference of race and colour, which have no connection with the nature of human rights.

WOMAN IN NATURE

As for the first point, we do not think that it is debatable. Everybody who has made some study in this respect knows that the differences between man and woman are not confined to their reproductive systems. The only question is whether or not these differences affect the determination of their rights and obligations.

The European scientists and investigators have thrown ample light on the first point, and their deep biological, psycho-logical and sociological studies have not left the least doubt about it. But what has not attracted enough attention of these scholars is the fact that the differences between man and woman affect their family rights and obligations, and place them in

dissimilar positions with regard to each other.

The world famous French physiologist, surgeon and biologist, Alexis Carrel, in his very excellent book, 'Man, the Unknown Being' admits that, according to the law of creation, man and woman have been created differently, and that their differences make their rights and obligations different.

In this book he has included a chapter under the heading, Sexual Functions and Genetics". In it he says: "The testicles and the ovaries have vast functions. They not only produce male and female cells, the union of which brings a new human being into existence, but also secrete into the blood those fluids which give male and female characteristics to our feelings and to the tissues and organs of our body. It is the secretion of the testicles that generates boldness, zeal and recklessness. These are the same characteristics which distinguish a fighting bull from an ox. The ovary also affects the woman's being in the same way.

... The difference which exists between man and woman, is not related solely to the shape of their genital organs, or woman's having a uterus and giving birth to children and their special method of education, but is the result of a deeper cause. It emerges from the chemicals which the genital glands secrete into the blood.

It is owing to the disregard of this important point that the supporters of woman's movement think that both the sexes can receive the same kind of education and training and may undertake the same kind of education and training and may undertake the same professions and responsibilities. In fact, woman differs from man in many respects. Every cell of the human body and all the organic systems, especially the muscular system, are stamped with the mark of sex. The physiological laws also, like astronomical laws, are stable and unalterable. Human tendencies can have no effect on them. We have to accept them as they are. The women should try to develop their own talents and should advance in the direction which suits their innate character, without blindly imitating men. It is their duty to make a greater contribution than man, to the development of humanity. They should not take their duties lightly".

Carrel, after explaining the development of spermatozoon and ovum and the way their union takes place, points out that the existence of female is necessary for procreation, but not the existence of a male. He adds that pregnancy completes the body and the soul of a woman. In the end of the chapter he says: "We should not visualise for young girls the same way of thinking, the same kind of life and the same aspirations and ideals as we normally visualise for young boys. The education and training experts must keep in view the organic and psychological differences and natural functions of man and woman. Attention to this basic point is of the utmost importance for the future of our civilisation".

As you may observe, this great scientist lays stress on many differences between man and

woman and believes that these differences place them in dissimilar positions.

In the following chapter also, we shall quote the views of the scientists on this point, and then we shall come to the conclusion in what respects man and woman have similar capabilities and needs, and hence should have similar rights and obligations, and in what respects they have dissimilar positions and hence should have dissimilar rights and obligations.

That part of the book will be most important for the study and determination of the family rights and obligations of man and woman.

Disparities Between Man and Woman

This seems to be an odd phrase. It appears that though we are living in the 2nd half of the 20th century, yet there are some people, here and there, who have a medieval way of thinking, and still pursue the outdated idea of disparity between man and woman. Like the people of the medieval ages they are of the view that woman belongs to the inferior sex and that she is not a perfect human being. She is something betwixt and between man and animal. She is not fit to lead an independent life and must live under the supervision and control of man. But we know that all these ideas are outdated and obsolete. Today we know very well that the fake charge of imperfection against woman was concocted by man during the days of his ascendancy over her. Now, the proven fact is that woman belongs to the superior sex and man to the inferior one.

These are the views of some modern Westerners. In actual fact, the wonderful scientific progress of the 20th century has clearly proved the existence of disparities between man and woman. Their existence is not a malicious misrepresentation but a scientific truth, based on observation and experiment. Anyhow, these differences have nothing to do with the superiority or inferiority of either sex. The law of creation has ordained them simply to make the bond of conjugal relations firmer and to lay the foundation of the union between husband and wife deeper and better. Nature wanted to distribute family rights and obligations between them with its own hands. The law of creation has made the disparities between man and woman similar to the difference between the various organs of a body. If it has given a distinctive position to each one of the eyes, the ears, the hands, the feet and the spinal column, it does not mean that it has been unjust or has made any discrimination against any of them.

IS IT PROPORTION OR PERFECTION AND IMPERFECTION?

It is amazing that some people insist that the disparity in the physical and psychological capabilities of man and woman is due to the imperfection of woman and the perfection of man. They hold that, for certain good reasons, woman has been intentionally created imperfect.

The notion of the imperfection of woman has been more popular in the West than in the East. The people of the West have given her a raw deal. Sometimes, misquoting the religion, they say that woman should be ashamed of herself. Sometimes they say: "Woman is the being, having long hair and a deficient brain", "Woman is the partition between animal and man"

and so on.

It is still more amazing that some Westerners, having taken a 180 degree turn, have lately begun trying to put forward a thousand and one arguments to prove that by creation, man is inferior and imperfect and that woman is superior and perfect.

If you have read the book, 'Woman, the Superior Sex', by Ashley Montague, you may know how its author, by misrepresenting the facts and adducing incongruous arguments, has tried to prove that woman is more perfect than man. As far as the medical and psychological studies and social statistics are concerned, this book is very valuable, but where the author tries to draw his own conclusions to prove his claim, which is the title of the book, he goes to the utmost extent of absurdity. It is not understood why it is necessary that the Westerners should one day disparage woman so much that the next day, to make amends for the past, they are compelled to absolve her from all the defects which they had ascribed to her, and instead debit man with them. What is the necessity of regarding the differences between man and woman as the result of the perfection of one sex and the imperfection of the other, so that we may be compelled sometimes to take man's side and sometimes woman's?

The author of this book insists that woman is superior to man and regards the privileges of man as the product of historical and social factors and not the result of natural causes.

In fact, the differences between man and woman are a question of proportion or suitability and not that of perfection or imperfection. The law of creation has decreed that as man and woman have been created to lead a joint life, they should bear a specific proportion of their capabilities despite all differences. This point will be clarified later.

A PLATONIC THEORY

The subject of dissimilarity between man and woman is not a new question, which might have cropped up during our time. It is at least 2,400 year old. It was discussed, in its present form, by Plato in his book, "The Republic".

He expressly maintains that men and women have the same capabilities, and women can perform the same jobs and enjoy the same rights as men do.

The germs of all ideas about woman, which have emerged during the 20th century and even of that part of these ideas which appears to be odd and unacceptable to the 20th century people, are found in the views of Plato. That is why the people admire him so much and call him the Father of Philosophy. Plato, in the fifth part of his book, "The Republic", has discussed such questions as communism of women and children, improving the breed, sterilisation of some men and women, confining the breeding activity to only those who possess high hereditary qualities, rearing children outside the family atmosphere, and

confining procreation to certain years of life, during which vitality is at its peak.

Plato believes that, like man, woman should also be given military training and, as man takes part in athletic competitions, woman should do so as well.

Anyhow, there are two points about what Plato has said. One is that he admits that physically and mentally women are weaker than men. In other words, he considers the disparity between man and woman to be quantitative, though he is opposed to the existence of any qualitative disparity in their capabilities. He believes that both man and woman have similar talents. The only thing is that in certain respects woman is weaker than man, but that is no reason why she should have a separate sphere of activity.

As Plato regards woman weaker than man, he thanks God that he was born a man. He says: "I thank God for my having been born a Greek, not a non-Greek, a free man not a slave, and a man not a woman".

The second point is that all that Plato said about the improvement of breed, equal promotion of the talents of both the sexes, and the communism of women and children, is related only to the ruling class, that is the ruling philosophers or philosopher-rulers, because according to him, only this class is worthy of being rulers. As we know, politically he was an opponent of democracy and a supporter of aristocracy. So what he has said, on the above points, relates to the aristocratic class. As for other classes, he has different views.

ARISTOTLE VERSUS PLATO

Plato's pupil, Aristotle, is the next thinker of the ancient world, whose views are available to us. He has expressed his views on the disparity between man and woman and has strongly opposed the views of his teacher Plato. He believes that man and woman differ not only quantitatively but qualitatively also. He says that the two sexes have talents of different kinds, and the functions which have been entrusted to them by the law of creation and the rights which have been bestowed on them by it differ greatly. According to Aristotle, their rules of morality are also different in many respects. It is possible that a moral quality may be excellent in regard to man, but it may not be so in regard to woman and vice versa.

In the ancient world, the views of Plato were replaced by those of Aristotle. The later intellectuals preferred the views of Aristotle to those of Plato.

THE VIEW OF THE MODERN WORLD

This was about the ancient world. Now let us see what the modern world says. It does not resort to speculation and approximation. It is concerned with observation, test and

experiment. Its conclusions are based on facts, figures and objective studies. In the modern world, as the result of deeper medical, psychological and social studies, more and bigger disparities between man and woman, unknown to the ancient world, have been discovered.

The people of the ancient world evaluated man and woman only on the basis that one is rougher, taller and more hairy, having larger limbs and a high-pitched voice, whereas the other is finer, shorter, and cleaner, having a low-pitched voice and smaller limbs. At the most, they took into consideration the difference in their age of puberty, and the difference in their intellect and feelings. They regarded man a symbol of wisdom, and woman a symbol of love and emotions.

But now many other disparities have come to light. It is now known that the world of woman is different from that of man in many respects.

We shall first narrate the differences between man and woman, as far as we have gathered them from the writings of the experts in this field. Then we shall mention their philosophy and shall point out which differences are natural and which are the products of historical, cultural and social factors. Some of these differences are so obvious that they are undeniable. The knowledge of others can b& gained with a brief study and experience.

DUALITIES

From the physical point of view man, on an average has larger limbs and woman smaller. Man is taller and woman is shorter. Man is coarser and woman is finer. Man's voice is comparatively rough and heavy, and woman's delicate and delightful. The bodily growth of woman is quicker, and that of man is slower. It is said that even the growth of a female foetus is quicker than that of a male foetus. Physically, man is stronger than woman, and his muscles are more developed, but woman has a greater power of resistance than man. Woman reaches the stage of puberty earlier, and loses the capability of reproduction earlier. A girl speaks earlier than a boy. The average brain of man is larger than the average brain of woman, but, in proportion to the whole body, the average brain of woman is larger. The lungs of man can breathe more air than those of woman. The heart of woman beats more rapidly than that of man.

Psychologically, man is more inclined to physical exercise, hunting and active life. The feelings of man are challenging and bellicose, whereas woman has a peaceful disposition. Man is aggressive; woman is comparatively calm and quiet. Woman avoids violence, and that is why the cases of suicide by women are fewer. Even when committing suicide, men tend to be more violent; they resort to shooting or hanging themselves or jump off lofty buildings, whereas women use sleeping pills, opium etc. for this purpose. Woman is more emotional than man and is more easily excited. Man is comparatively cool-minded. Woman is, by nature, much interested in ornaments, cosmetics, make-up and the latest fashions of clothes

whereas man is not. Feelings of woman are not stable; she is comparatively fickleminded. She is more cautious, more religious, more talkative, more fearful and more ceremonious than man. Her feelings are motherly from childhood She cannot compete with man in deductive sciences and dry intellectual subjects, but in literature and arts like painting etc. she is not at all behind him. Man has a greater power of concealing his secrets. He can keep the unhappy happenings to himself and that is why he is more often afflicted with the diseases caused by introversion. Woman is more sensitive and soft- hearted than man; she can easily resort to weeping and sometimes even becomes unconscious.

A COMPARATIVE VIEW OF EACH OTHER

Man is the slave of his desires; woman is the bonds-maid of love. Man loves the woman whom he likes; woman loves the man who realises her value and proclaims his love to her. Man wants to own the woman; woman wants to dominate man's heart. Man wants to overpower woman; woman wants to penetrate into his heart. Man wants to capture woman; woman wants to be captured. Woman wants man to be courageous and gallant; man wants woman to be beautiful and charming. Woman wants the protection of man, and looks upon such protection as the most valuable thing she can possess. She can control her desires. Man's sexual urge is active and aggressive, woman's passive and excitable.

DISPARITIES BETWEEN MAN AND WOMAN

An American psychologist, Professor Reek has published in a voluminous book the result of his researches into the affairs of man and woman. He says: "The world of man is totally different from that of woman. If woman cannot think or act like man, it is because they belong to two different worlds."

He further says: 'According to the Old Testament, man and woman have come into being from the same flesh. That is true, but though they have come into being from the same flesh, they have two different bodies, which are totally unlike each other in composition. They never have the same feelings and never show the same reactions to various incidents and accidents. They are like two planets moving in two different orbits. They may understand each other and may be complimentary to each other, but they are never unified. That is why they may live with each other, love each other and may not get fed up with the temperament of each other."

Professor Reek compares the spirit of man with that of woman and discovers many of their dissimilarities. He says:

"It is boring to man to have to live always with the woman he likes. But nothing is more pleasant to woman than to be near the man she loves.

Man always wants to be the same, but woman wants to get up every morning with a new and fresh look.

The best sentence which a man can address to a woman is: 'My dear, I love you'. The most beautiful sentence, which a woman says to a man of her choice is: 'I am proud of you'.

The man who has had several mistresses in his life becomes an object of attraction for other women, but men do not like the woman in whose life more than one man has existed. When men become old, they feel distressed because they lose the jobs on which they depended. The old women feels happy, because, from their own point of view, they come to possess all the best things one could desire, a house and a few grandchildren.

Good luck from man's point of view means securing a respectable position in the society. But to a woman good luck means to captivate the heart of a man and keep it safe through out her life.

A man always wants to convert the woman of his choice to his own religion and nationality.

For a woman it is as easy to change her religion and nationality for the sake of the man she likes as to change her family name following the marriage."

A MASTERPIECE OF CREATION

Irrespective of the question whether or not dissimilarity between man and woman causes the dissimilarity in their respective rights and responsibilities, dissimilarity itself is one of the most wonderful masterpieces of creation. It is a question which leads one to the recognition of Allah and His Unity. It proves that the system of this world has been most wisely and exquisitely planned. It shows that creation is not a matter of chance. Nature is not a blind force. It is not possible to interpret the world phenomena without recognising the Ultimate Cause'. With a view to preserving the species, the great creative mechanism has brought the reproductive system into existence. Males and females are continuously being produced. As the continuity of the human species depends upon their mutual co-operation, nature has seen to it that the males and females seek coexistence with each other. For that purpose self-interest which is essential to every living being has been converted into sentiments of service, co-operation and tolerance. To make the scheme practical, and to ensure that their bodies and souls fit in each other comfortably, certain physical and spiritual disparities between them have been arranged. These very disparities attract man and woman to each other. If woman had the same physical features, the same temperament and the same habits as man has, it would not have been possible for her to attract man towards her, in the same way as she does now. If man had the same physical and psychological features as woman has, she would not have regarded him as her ideal and would not have done anything to win his heart. Man has been created to dominate the world, and woman has been created to dominate man.

The law of creation has so ordained that both man and woman seek each other and are interested in each other. But their relationship is not of that nature which they have with other possessions; that relationship emerges from selfishness. They want to possess things for their own use, and look on them as the means of their comfort. But, the relationship between man and woman means that each one of them wants the comfort and happiness of the other, and enjoys making sacrifices for the sake of the other.

A CONNECTION HIGHER THAN PASSION

It is amazing that some individuals cannot differentiate between sexual passion and love. They think that the relation between husband and wife is exclusively based on greed, lust and a sense of exploitation. They hold that this relationship is of the same kind as man has with the things he eats, drinks, wears or rides. These people do not know that in nature, besides those based on self-interest, there exists other relations also. These are the relations from which sacrifice, tolerance and goodwill proceed. These are the relations which demonstrate humanity. Such relations are, to a certain extent, found among animals also, as far as their mates and the young ones are concerned.

These persons think that man always looks at woman, just as a bachelor sometimes looks at a dissolute woman. They believe that only lust can join man and woman together. In fact, the matrimonial union is something higher than physical passion, and its basis is in what has been described by the Qur'an as 'affection and compassion'. The Qur'an says: *'And of His signs is this that He created your mates from yourselves that you might find rest in them, and He put between you affection and compassion"*. (Surah ar-Rum, 30 : 21).

What a grave mistake it is to interpret the history of man-woman relationship from the angle of employment and exploitation, or on the basis of a struggle for survival! But still some people do so and advance baseless arguments to support their line of thinking. We are really amazed to see the history of man-woman relationship being explained on the basis of the principle of contradiction, as if man and woman are two divergent social classes which are always in conflict with each other. If it is possible to explain the history of the relations between fathers and children from the angle of employment and exploitation, only then the historical relations of husbands and wives can also be explained from this angle. It is true that man has always been stronger than woman, but the law of creation has so ordained that instinctively he has not been able to mete out the same unkind treatment to his wife as he has meted out to his slaves, subordinates and occasionally, even to his neighbours.

We do not deny that men have been cruel to women. We are only against the way how this cruelty is explained. Throughout history, men have oppressed women, but they maltreated their children also, despite all the love they have had for them, and despite ignorance, prejudice and custom, and not by way of exploitation. Roots of these kinds of oppressions are

those very factors which make man Oppress and do injustice to himself; these are: ignorance, bias, traditions and habits, more than selfish cravings.

THE DUALITY OF THE FEELINGS OF MAN AND WOMAN WITH REGARD TO EACH OTHER

Not only are the family relations of man and woman with each other different from their relation to other things, but also their attitude to each other is not similar. In other words, the nature of the relation of man to woman is different from that of woman to man, though they both attract each other, but, unlike the non-living bodies, in this case, the smaller body pulls the larger body to itself. Man has been created as a manifestation of longing, love and pursuit, and woman as a manifestation of attraction and desirability. The feelings of the two are of different but complementary kind. One seeks and the other wishes to be sought after.

Sometime ago, a newspaper published the photograph of a young Russian girl who had committed suicide. This girl left a note in which she said that no man had ever kissed her and so her life had become unbearable.

For a girl it is a matter of great disappointment that no man loves her and nobody has kissed her. But a young boy is not frustrated if no girl has kissed him. He is frustrated only when he is not able to kiss a girl.

Will Durant in the course of his exhaustive discussion, says that a girl whose only merit is knowledge and high thinking. but who lacks natural charm and semi-conscious cleverness, is not likely to succeed in finding a husband. Sixty per cent of the university educated women remain without a husband.

He says that an eminent woman intellectual complained that nobody was willing to marry her. She used to say: 'Why doesn't anybody love me? I can be better than most of the women. Still, many insignificant women are wanted, but I'm not."

It may be observed that the sense of frustration of this woman is different from that of any man. She complains as to why nobody loves her.

Man is frustrated only when he cannot find a woman of his choice, or, if he finds her, he cannot win her.

The temperaments of man and woman have been so ordained, that with the definite purpose of making the union between husband and wife firm and deep it may enable both of them to enjoy their life better. In fact, the foundation of the human society and the upbringing of the future generations has been laid on this very union.

A lady psychologist writes: "As a psychologist my biggest interest has been the study of the spirit of men. Some time ago I was given an assignment to investigate the psychological factors of man and woman. I arrived at the following conclusions:

(i) All women are interested in working under the supervision of someone else. They like to work as a subordinate rather than a boss.

(ii) All women want to feel that their existence is effective and is required".

This psychologist expresses her views thus: "I believe that these two spiritual requirements of women proceed from the fact that women are led by emotions and men by reason. It is often observed that women are not only equal to men in intelligence, but sometimes even superior to them. Their only weak point is that they are too emotional. Men's thinking is always more practical. They judge better; they are better organisers and better directors. The superiority of the spirit of men to that of women is a thing which has been designed by nature itself. Whatever women may do to counter this fact will be of no avail. Women should accept the reality that, as they are too sensitive, they need men's supervision in their lives. The biggest aim of women's life is to 'ensure' her future. Once she achieves it, she says goodbye to many of her activities. She is afraid of taking risks. Fear is the sentiment, to overcome which woman needs man's help. All jobs which require constant thinking are boring to her".

A HASTY MOVEMENT

The European movement for the restoration of women's rights was a hasty affair conducted with undue urgency. The reforms being outstanding, scientific consideration was not given to the proposed measures, with the result that they became a conglomeration of good and bad points. No doubt, a series of miseries of women were removed, many rights were granted to them and doors hitherto closed were opened for them by the women's Rights movement, but at the same time the reforms brought, in their wake other misfortunes and miseries, not only to women, but to the whole human society. If undue hurry had not been made, women's rights would have been restored in a better way and there would have been no hue and cry by the intellectuals against their evil effects. Anyhow, it is hoped that better counsels would prevail and future reforms, instead of being emotional, would proceed with knowledge and a sense of understanding. Comments of the intellectuals augur well for the future. It appears that the Westerners are suffering from the after-effects of the same reforms which seem to be exhilarating to their imitators in the East.

WILL DURANT'S VIEW

Will Durant in his book, Pleasures of Philosophy", has elaborately discussed the sexual and family questions. We select some of his ideas so that the readers may become acquainted with

the course of current thought among the western intellectuals and avoid hasty conclusions.

He says under the heading 'Love'. "The first clear tune of love begins with the coming of puberty. Puberty is a Latin word, meaning the age of hair, that is the age of the appearance of hair on the body of the boys, especially on their chest which is a matter of pride for them, and on the face, which they regularly shave. The quality and quantity of hair, other things being equal, is related to the power of procreation and genesis. Hair is in its best condition at the peak of virility. This growth of hair, along with the coarseness of voice, is a part of the secondary sex characteristics, appearing in the boy at the time of puberty. As for the girls, at the time of puberty nature makes their bearing and movements so graceful that they attract the attention of onlookers. Their buttocks begin to flatten to facilitate maternity. Their breasts develop and become prominent to suckle a child. Nobody knows exactly what is the cause of the appearance of these secondary sex characteristics. Anyhow, the theory of Professor Starling has lately found many supporters. According to it, the genital cells, at puberty, not only produce spermatozoa and ova, but also secrete a hormone that enters the blood and causes physical, spiritual and other changes. At this age, not only does the body attain a new vigour, but the spirit, conduct and demeanour are also affected in innumerable ways. Romain Rolland says that during the years of life a time comes when many slow physical changes result in further development of a male or a female. The most important of these changes are the appearance of heart-warming boldness and vigour in a male, and the fascinating grace and delicacy in a female. Damoseh says that by nature basically "all men are liars, deceitful, braggarts, hypocrites, cunning and quarrelsome; and all woman are selfish, ostentatious and unfaithful. But there is one thing in the world which is noble and sacred, and that is the union of these two imperfect beings . . towards perfection.

The etiquette of mate-seeking in adults consists of an attack by a male to gain a free hand but withdrawal by a female for incitation and deception (of course, there are exceptions). As man, by nature, is war-like and a hunting animal, his action is positive and aggressive. Woman for him is a reward which must be carried off and owned. Mate-seeking is a fight and struggle, and marriage is possession and domination. The existence of substantial chastity in woman serves the interests of procreation, for shy abstinence of a female is helpful to her in choosing her mate. Chastity prevents women from being casual in the choice of her lover, that is the father of her future children. Woman speaks for collective interest and man for individual interest. . . . Woman is more skilful in making courtship, for her desire is not so intense as to make her shut her eyes to reason.

Darwin has observed that in most species a female is not much interested in love-making. Other naturalists, like Lemberzo, Cash and Kraft Ebing are also of the opinion that women are more inclined towards being attractive, receiving the vague and general appreciation of men, and more interested in men paying attention to her real inner desires than in seeking sexual pleasure. Lemberzo, and others say that "the natural basis of woman's love is only a secondary characteristic of her motherhood. All the feelings and sentiments which join woman to man, do not proceed from her physical needs, but derived from her instinct of

submission (placing herself under the protection of man). This instinct is meant to meet the requirements of her factual position

Will Durant in the chapter under the heading, 'Man and Woman', says: "The main function of woman is to serve the cause of the survival of the species, and that of man to serve his wife and children. They may have other functions also, but based on wisdom and expediencies they are subservient to these two basic ones. These are the two basic but semi-unconscious human objectives, on the realisation of which the happiness of humanity depends. Woman, by nature, mostly seeks peace, not war. It appears that in many species the female has no bellicose instinct at all. If it ever resorts to fighting, it does so for the sake of its offspring.

Woman is more patient than man, though man is bolder in facing the risky and critical jobs of life. She has more endurance, and can face the countless minor hardships and irritations of daily life better. Her martial spirit is confined to her appreciation of this spirit in others. She loves soldiers and likes strong and sturdy men. As such she may be influenced by mysterious masochistic tendencies and be victimised by manly strength.

The spirit of appreciating strength and vitality in others sometimes overshadows her economic sense, and occasionally she prefers to marry a brave man. She gladly submits to a man who commands in just and fair ways over others. If women are not so obedient nowadays, as they used to be before, it is because men are now weaker in strength and her own surroundings and is usually limited to her house. She her own surrounding and is usually limited to her house. She is as deep as nature. She is also as limited as her house. Her instinct keeps her attached to old traditions. She is neither mentally nor habitually given to trial. (Some women living in big cities may be an exception). If she resorts to free love, that is not because she wants freedom in that but it is because she has met without disappointments when she is married to a responsible man. If in her youth she sometimes gets enamoured of politics and extends her interest to multifarious human aspects, she usually gives up all such activities after finding a faithful husband, and quickly pulls herself and her husband out of public affairs. She reminds her husband that his sense of intense loyalty should be limited to his home as woman does not require much thinking to know that all reforms begin at home. As she turns a fanciful and vagrant man into a man tied to his home and children, the survival of mankind depends on her. She is not concerned by nature with laws and governments. Her house and children are the objects of her love. If she is successful in looking after them, she does not care which government comes into power and which government goes out of power. Nature does not care for the laws of the governments. It holds the household and the child dear. If it succeeds in preserving them, it is not interested in the governments, and laughs at those who try to change the basic laws. If today nature appears to be helpless in protecting the household and the child, that is because the woman has since long forgotten the nature. But the failure of the nature is not everlasting. It can always draw upon hundreds of advantages it has in store, whenever there is occasion for it. There are nations and races more numerous than we are, and nature can ensure its absolute and indefinite continuity from among them."

Dower and Maintenance

DOWER AND MAINTENANCE - I

It is one of the most ancient traditions of the human family relations that at the time of marriage the man pays a dower *(mahr)* to the woman or to her father. In addition to that, he undertakes to bear the expenses of his wife and children during the entire period of his life. What is the basis of this tradition? Why and how did it begin? Why should the husband be responsible for the maintenance of his wife? What is the spirit of dower? Are dower and maintenance still relevant, even if man and woman enjoy all human and natural rights, and the relations between them are based on justice and equity; or are they only the surviving remnants of the days when man owned woman? Does justice and the equality of rights, especially in the 20th century, demand that these outdated traditions should be abolished, a marriage should take place without a dower, woman should be responsible to bear her own expenses, and the children should be the joint responsibility of husband and wife?

We propose to answer these questions, and begin with the question of dower. Let us see how this tradition came into being, what its philosophy is and how the sociologists explain its origin.

A BRIEF HISTORY OF DOWER

It is said that during pre-historic times man lived a barbaric life, which had the tribal form. For unknown reasons marriage was prohibited between a male and a female of the same blood. Hence the young men of a tribe, who wanted to marry, were compelled to choose their wives from some other tribe. They often visited other tribes for this purpose. At that time man was not aware of his role in begetting children. He thought that the children belonged exclusively to their mother. Though he often found that the children closely resembled him, he did not know the cause of that resemblance. Naturally the children also thought that they belonged to their mother and not to their father. At that time ancestry was traced through the mothers. Men were considered to be barren and sterile. After marriage they stayed with their wife's tribe as a mere adjunct of it, because the wife required her husband's company. This period is known as the period of matriarchy.

It was not long before man discovered his role in procreation and came to believe that the children in reality belonged to him. From then onwards, he dominated over woman and

assumed the role of the head of the family. Thus, the so called period of patriarchy began.

During this period also a marriage between the people having the same blood was prohibited. Man had to choose his wife from some other tribe, and bring her to his own tribe. As there was constant warfare among the tribes, the only way to get a wife was to kidnap a young girl from some other tribe.

Gradually peace took the place of warfare and the different tribes were able to achieve peaceful coexistence. During this period the custom of kidnapping the girls was abolished. In order to get the girl of his choice the man went to her tribe, became a hired worker of her father and worked for him for some time. In consideration of the services rendered by him the girl's father gave her hand to him and he took her to his own tribe.

When money became common, man discovered that instead of serving the bride's father for years, it was better to present a suitable gift to him and take the girl immediately. That was the origin of the dower *(mahr)*.

According to this account, in the early days man lived as an adjunct of woman and served her. During this period woman ruled over man. In the next stage, when power passed into man's hands, he kidnapped women from some other tribe. During the third stage, in order to win a woman, man went to woman's father and served him for years. During the fourth stage man presented a sum of money to the woman's father. And that is how the custom of dower originated.

It is said that since the time man abolished the system of matriarchy and laid the foundation of patriarchy, he gave woman the status of a slave, or at the most, of an employee or a servant of his. He looked upon her as an economic tool, which, by the way, could satisfy his lust also. He did not give her social or economic independence. The fruits of woman's labour belonged either to her father or to her husband. She did not have the right to choose her husband, nor could she carry out any economic activity for her own sake. The money which man paid as dower and the expenses which he bore as maintenance *(nafaqah)* were in consideration of the economic gains which he derived from her during the period of conjugal relations.

DOWER IN THE ISLAMIC SYSTEM OF RIGHTS

There is a fifth stage also about which the sociologists and other commentators have observed silence. During this stage man gives a present to woman herself. Neither of her parents has any claim to it. Woman receives the present, but she preserves her social and economic independence. She chooses her husband of her own free will, not with the sanction of her father or brother. Furthermore, neither has her father nor her husband any right to enslave or exploit her. The proceeds of her work and labour belong exclusively to her. In financial matters she does not require anybody's supervision or patronage.

The husband has only one right. He can enjoy sex with his wife. As long as the conjugal relations are intact, he is under obligation to meet all the legitimate requirements of his wife within his own financial limits.

This is the stage which is recognised by Islam and on which Islam has laid the foundation of matrimonial relations. Many passages of the Qur'an emphasise that the dower exclusively

belongs to woman. Besides, the husband has to maintain her and meet her expenses. At the same time, whatever woman earns belongs to her and not to anybody else, not even to her father or husband.

It is here that the question of dower and maintenance becomes a little puzzling. As long as the dower was paid to the father of the girl and she went to the husband'5 house just like a slave and the husband could economically exploit her, the question was easy to understand. The dower was then paid as a price of the girl and she had to be maintained like any other slave. But, if nothing is to be paid to the father of the girl, the husband is not allowed to exploit his wife; woman has complete economic independence, and as far as her rights are concerned, she does not require the supervision, control or patronage of anybody. Then what is the sense of a dower and maintenance allowance being paid?

A GLANCE AT HISTORY

To be able to grasp the philosophy of the dower and maintenance in the fifth stage, we should examine, a little critically, the theory of the four periods mentioned above. The fact is that all that is said about these periods is nothing more than a hypothesis based on presumptions and speculations. it neither constitutes a historical fact nor a scientific truth. We have no definite knowledge about the life of pre-historic man. All that is said about the matriarchal period, the sale of girls by their fathers and the economic exploitation of wives by their husbands, is not very credible. There are two things which strike one's mind about these presumptions and speculations. One is that the primitive man has been represented to be extraordinarily barbarous, violent and devoid of human sentiments. The second thing is that the wonderful planning of nature, to reach its universal goals has been ignored.

Such an interpretation of human nature can possibly be made by the people of the West and not by those of the East except by those of the East who are fond of following the West. For certain reasons, the European is not familiar with human sentiments. He cannot admit that they play a basic role in history. If he has an economic bent of mind, his attention remains confined to the problem of bread and butter. He looks at history as a machine, which does not move unless fed with fuel. If his trend is sexual, he regards the entire humanity and human history, with all their cultural, artistic, moral and religious manifestations, as modified forms of sex-play. If his views are political, then, according to him, the entire human history consists of a series of battles, bloodsheds and acts of cruelty.

The European was put to so much torture in the name of religion, during the Middle Ages, when people were often burnt alive, that he has become allergic to the name of God, religion and everything that religion stands for. That is why, in spite of all the evidence of the fact that nature has a goal and the system of the world is not working haphazardly, he would not dare to admit the existence of the "First Cause".

We do not ask the Western interpreters of history to admit the existence of the prophets, who have appeared throughout human history to proclaim the message of justice and humanity, and to fight corruption, which they successfully did. We only want them not to ignore the

conscious role of nature at least.

No doubt in the history of man-woman relations there have been many cases of extreme cruelty, some of them the most atrocious ones, which have been narrated by the Qur'an also, but it cannot be said that the entire history has been replete with instances of cruelty and violence.

THE REAL PHILOSOPHY OF DOWER

According to our belief, the dower has come into being as the result of skilful arrangements, put into the very design of creation, to balance the relations between man and woman. The dower has come into being, because, by nature, the respective roles of man and woman are different from each other. According to the gnostics the law of love and attraction prevails everywhere in the Universe. As everything is designed to perform a definite function, its role is different from that of all other things.

While discussing the disparities between man and woman, we have already pointed out that their feelings and sentiments, with regard to each other, are not the same. The law of creation has ordained that woman should have the qualities of beauty, pride and indifference, whereas man should have those of courting and pursuit. That is how the physical weakness of woman, as compared to man, has been counterbalanced, and for this very reason it has always been man who has sought woman's hand and proposed to her. As we have already seen, according to the sociologists, during the periods of both matriarchy and patriarchy, it has been man who has sought after woman.

The scientists say that man is more lustful than woman. Certain Islamic traditions say that man is not more lustful. Actually the case is the reverse, but woman has a better sense of self-restraint. Practically, both the views come to the same thing. Anyway, it is certain that man has less self-control. This feature has enabled woman not to run after man, nor to submit to him easily. Man's instinct compels him to approach woman, and he takes steps to gain her favour. One of these steps is to present her with a gift.

Members of the male sex have always vied with each other to win a female. They have even fought each other to achieve this end. But the members of the female sex have never shown the same keenness to win a male. This is so, because the roles of the male and the female are not the same. The male always pursues a female whereas the female shows a sort of indifference to him.

The dower is closely related to woman's modesty and chastity. She knows by instinct that her self-respect demands that she should not submit herself freely.

That is how woman, in spite of her physical weakness, has been able to bring men to their knees, to compel them to vie with each other, and to make Romeos run after Juliets. When she agrees to marry a man, she receives a present from him as a sign of friendship, cordiality and goodwill.

It is said that among some barbaric tribes, when a girl had more than one suitor, she used to persuade them to fight a duel. Whoever won the duel or killed his rival was considered fit to secure the hand of the girl.

There was a newspaper report that a girl in Tehran persuaded two boys to fight a duel in her presence. From the point of view of those who think that power means only brute force and maintain that the history of man-woman relations contains nothing but cases of cruelty and exploitation, it is unbelievable that the fair and weaker sex should be able to set on two members of the stronger sex to attack each other. But for those who have some knowledge of the wonderful and mysterious power which nature has granted to woman there is nothing strange in this.

Woman has had much influence over man. Her influence over man has been greater than man's influence over her. Man is indebted to woman and to her chastity and charming modesty for his many achievements of art and feats of bravery. The credit for the building of many a personality and the developing of many a genius goes to her. Woman has built man and man has built the society. If woman loses her qualities of chastity, modesty and restraint, and tries to play the role of man, first she may be debased, then man may lose his manhood, and in the end the society may be ruined.

That faculty of woman, has enabled her to maintain her personality throughout history; to compel man to come to her door-step as a suitor; to lead man to rivalry and even to fight for her sake; to maintain her modesty and chastity as her hallmark; to keep her body hidden from the gaze of man; to inspire man to love to perform feats of bravery, as a sacred asset; to excel in intellectual and creative deeds; to sing amorous songs and to submit to the weaker sex in humility. Hence this tendency has impelled bridegroom to offer his bride a present at the time of marriage as the dower.

The dower is a part of the natural law, which has been promulgated by nature itself.

THE DOWER IN THE QUR'AN

The form of the dower described above in connection with the fifth stage is not an invention of the Qur'an. All that the Qur'an did was to restore it to its natural and pristine form. The Qur'an in its incomparably elegant style says: *"Give to the women a free gift of their marriage portions"*. (Surah an-Nisa, 4 : 4) This means that the dower belongs to women exclusively and it is a gift to be paid directly to them. It has nothing to do with their fathers or brothers. In this short sentence the Holy Qur'an has referred to three basic points:

Firstly it has used for marriage portion or the dower the word, *saduqatehinna* meaning truthfulness and sincerity and not the word *mehr*. Thus, the dower is a symbol of the cordiality of the man paying it. This point has been expressly mentioned by a number of the commentators of the Holy Qur'an, such as Zamakhshari, the author of the well-known commentary, the *Kashshaf* Similarly, the famous philologist, Raghib Isfahani says in his lexicon of the Qur'an that the dower has been called *saduqah* because it is a symbol of the sincerity of faith. Secondly, it is clear from the above verse of the Qur'an that the dower is to be paid directly to the woman, and her parents have no claim to it. It is not a compensation for the efforts made by them to bring up their daughter. Thirdly, it is clear that the dower is nothing except a present and a gift.

THE QUALITY OF FEELINGS AMONG ANIMALS

The law of sexuality is not confined to human beings. It prevails in the animal kingdom also. Though both the sexes are in need of each other, the male feels a greater need for the female, and takes the initiative in gaining her favour. That is why the male does not misuse his superior strength, and assumes a meek attitude towards the female.

GIFTS IN ILLICIT RELATIONS

Even when a man and a woman want to enjoy sex unlawfully and indulge in free love, it is man who presents gifts to woman. When they have coffee, tea or food together it is man who regards it his duty to pay the bill. Woman considers it insulting to her to spend money for the sake of man. Some may contend that a boy requires financial potentialities to indulge in debauchery, whereas for a girl it is a means of receiving gifts. These customs, which are common to both lawful and unlawful relations, may also emanate from the dissimilarity of the feelings of man and woman in relation to each other.

A EUROPEAN IS MORE NATURAL IN LOVE-MAKING THAN IN MARRIAGE

In the West where family rights have been perverted in the name of equality of human rights, and an attempt is being made to allot man and woman similar functions in domestic life, man still performs his natural role, as far as free love is concerned. In free love he still offers presents to woman and bears her expenses, whereas in the case of a European marriage, not only does the dower not exist, but woman also has to shoulder a heavy responsibility in connection with domestic expenses. This means that European love-making is more natural than European marriage.

The dower is an example, which indicates that man and woman have been created with dissimilar genius, and the law of creation has entitled them to dissimilar natural and innate rights.

DOWER AND MAINTENANCE - II

In the preceding chapter we have described the philosophy and origin of dower. It was pointed out that the law of creation has fixed the relationship between the two sexes and has allotted them separate roles in life. It was also pointed out that the custom of dower has originated from the gentle and affectionate feelings of man, and not from his sense of

domination and harshness. The role played by woman in this connection has proceeded from her peculiar sense of self-restraint, and not from any weakness or helplessness on her part. The payment of dower is a device prescribed by the law of nature, to enhance the value of woman. It gives a personality to her. Its moral value is far higher than its material value.

PRE-ISLAMIC CUSTOMS ABOLISHED BY ISLAM

The Holy Qur'an abolished many pre- Islamic Arab customs connected with dower and restored it to its natural and deserving pristine form.

During the pre-Islamic period the parents thought that dower belonged to them exclusively as a recompense for the pains they took in rearing and bringing up the girl.

It is mentioned in the *"Kashshaf"* (a celebrated commentary on the Qur'an) etc. that when a girl was born and somebody wanted to congratulate her father, he did so by saying:

'May this musk-bag be beneficial to you'. What he meant was:

'May you give her in marriage and receive her dower'.

During the pre-Islamic period, the fathers and, in their absence, the brothers, as natural guardians of the girl, gave her in marriage according to their own will and not according to that of the girl herself. At the same time they regarded her dower as belonging to themselves. They sometimes exchanged their daughters. A man would give his daughter or sister in marriage to another, in consideration of the latter giving his daughter or sister in marriage to the former. In this form of marriage, which was called *Shighar* marriage, neither of the wives would get a dower. Islam abolished this custom. The Holy Prophet has said: 'There is no *Shighar* (exchange of daughters or sisters) in Islam".

According to the Islamic traditions not only a father has no claim to any part of the dower of his daughter, but it is also not permissible to include, in the marriage agreement, a condition that apart from dower anything additional would be paid to him. In other words, a father is not allowed to derive any financial gain out of the marriage of his daughter.

Islam also abolished the custom according to which a man worked for his prospective father-in-law when money had not yet become a medium of exchange. This custom did not come into existence simply because the fathers wanted to benefit through their daughters. There were other reasons also, which were characteristic of the age and were not necessarily unfair. Anyhow, there is no doubt about the existence of such a custom in the ancient world.

The story of Moses and Shu'aib, narrated by the Qur'an, indicates the existence of such a custom. When Moses, while escaping from Egypt, reached the well of Madyan he took pity on the daughters of Shu'aib, who were standing in a corner with their sheep and nobody was paying any attention to them. Moses drew water for them. The girls, on returning home, told the story to their father who sent one of them back to Moses and invited him to his house. Having been introduced to each other, Shu'aib said to Moses one day: "I would like to give one of my daughters to you in marriage on the condition that you work for me for eight years. If you like, you may work for two years more in all 10 years". Moses accepted the offer and became Shu'aib's son-in-law. Such a custom was current at that time The reason was two-fold. First, money did not exist then and the only service which a bridegroom could render to his

wife or to his father-in-law was to work for them. The other reason was the existence of the custom of dowry. The sociologists believe that the custom of giving dowry by the father is one of the oldest traditions. To be able to provide a dowry to his daughter, the father either employed the bridegroom or took money from him. Practically what he took from his son-in-law was for the benefit of his daughter.

Anyhow, Islam has done away with this custom, and now the father of the woman has no claim to the dower, even if he wants it for spending it on his daughter. Only the woman herself has full rights to spend it as she likes.

During the pre-Islamic period there existed other customs also, which practically deprived the woman of her dower. One of them was the custom of inheriting conjugal rights. If a man died, his son or brother inherited his conjugal rights, in respect of his wife, in the same way as he inherited his property. The son or the brother of the deceased had a right, either to give the widow in marriage to another man and take her dower, or to declare her his own wife against dower already paid to her by the deceased.

The Holy Qur'an did away with this custom also. It says:

'0 you who believe! It is not lawful for you to inherit women forcibly" (Surahan-Nisa,4 : 19) In another verse, the holy Qur'an has totally banned a marriage with one's father's wife (stepmother) even if she be willing. It says: *"Marry not those women whom your father married"* (Surahan-Nisa,4 : 22).

The Holy Qur'an did away with every custom which deprived woman of her dower. One of such customs was that when a man lost interest in his wife, he harassed her with a view to making her agree to a divorce on the condition that she would return, wholely or partly, the dower which she had received. The Holy Qur'an says: *"Nor should you put constraint on them (women) so that you take away part of what you have given* '~ (Surahan-Nisa,4 : 19).

Another obnoxious custom was that a man would marry a woman and even pay her heavy dower, but after losing interest in her he would tarnish her image, accuse her of adultery and demand the dower back. This custom was also done away with by the Holy Qur'an.

ISLAM HAS ITS OWN SYSTEM OF DOWER

It is one of the indisputable principles of Islam that a man has no claim to the money or property of his wife, nor is he entitled to force her to do anything for him. The earnings of a working woman can in no way be appropriated by her husband without her consent. In this respect there is no difference between man and woman. Contrary to the custom prevailing in Christian Europe up to the beginning of the 20th century, woman, from the Islamic point of view, is not under the control of her husband in financial matters. She has full independence to deal with them herself. Though Islam has given complete economic independence to woman, and has allowed the husband no right in regard to her property, it has retained the system of dower. This shows that, from the Islamic point of view, dower is not paid to woman because the husband subsequently utilises her physical energy or exploits her economically. Islam has its own system of dower, which should not be confused with any other system. The objections, which are raised against other systems, are not valid in this case.

As stated in the preceding chapter, the Holy Qur'an describes the dower as a 'free gift'. According to the Qur'an, it is obligatory. The Qur'an has minutely taken into consideration all the characteristics of human nature and, to ensure that neither man nor woman forgets the respective role entrusted to him or her by nature, stresses the necessity of fixing a dower.

Woman's role is to respond to man's love. It is good if she loves a man but her love should be a reaction to the initiative taken by him. If she falls in love with a man who already does not want her, she would invariably be faced with failure and this will strike a blow to her personality. But if her love is in response to man's love, there is no question of her failure or a blow to her personality.

Is it true that woman is not faithful, that she is not consistent in love, and cannot be relied upon? It is true as well as false. It is true if the initiative comes from woman. If she is first to fall in love, such a love is not reliable. She will soon lose interest. But it is false if woman's love is in response to man's sincere love. In such a case it is unlikely to fade, unless man himself loses interest in her. Then, of course, it will wither. That is woman's natural love.

It is because of the cases of the first kind of love that woman is notorious for her infidelity, and it is because of the second kind of love that she is extolled for her faithfulness. If society wants firmness and stability of the conjugal bond, it has no alternative but to follow the Qur'an, which has prescribed distinct rules for man and woman. The law of dower is in conformity with nature, because it is a symbol that shows that love is initiated by man, and woman only responds to it. Man offers a gift as a symbol of his love and respect for woman. Hence, it is not appropriate to repeal this law which forms a section of the basic law formulated by nature itself.

As we have observed, the Holy Qur'an abolished many pre-Islamic customs and usages in connection with dower, though the people of that time were very much attached to them. What the Qur'an has prescribed is different from the custom prevalent in those days. Hence, it cannot be said that the Qur'an attaches no importance to the existence, or non-existence, of the dower. It could have abolished the dower totally, but it did not deem it fit to do so.

CRITICISMS:

Now that we know the views of Islam on dower, let us take up the objections raised by those who criticise this Islamic law.

A critic says: "As one has to spend money for getting a garden, a house, a horse or a mule, similarly money has to be spent to purchase a woman. And as the price of a house, a garden or a horse depends upon its size, beauty and usefulness, similarly the price of a woman varies according to her beauty or ugliness and her wealth or poverty. That is the philosophy of dower. There can be no conjugality without spending money and paying the price of the purchase".

Had it been a Western custom, could it have been possible to fabricate such a malicious slander against it? If one person gives money to another person, does that mean that he wants to purchase him? Should the custom of offering a present or giving a gift be abolished? The

Qur'an expressly says that dower is nothing but a free gift. Furthermore, Islam has organised its economic laws in such a way that they do not allow economic exploitation of a woman by a man.

You may say that many husbands in the East actually exploit their wives economically. We admit that, but it has nothing to do with dower. These husbands do not say that they paid a dower to them. Actually there are other reasons why, in many cases, men dominate over women. Why should the natural law be wrecked instead of reforming the men concerned? The underlying idea of all such arguments is that the people of the East should forget their own philosophy of life and their human standards, so that they may easily be devoured by aliens.

The same critic adds: "If complete economic equality between man and woman is established, there is no reason why man should be held responsible for maintaining his wife and providing her with food, clothing and dower. Such precautions and double assurances have never been considered necessary in the case of man".

If we minutely analyse this argument, it simply means that during the period when woman had no right of holding property, and had no economic independence, the dower and maintenance were justified to a certain extent, but in the cases where woman has been given economic independence, as Islam has already given her, there is no justification for providing her maintenance and dower.

The critic appears to be under the false impression that dower is paid simply to compensate woman for her being deprived of her economic rights. The fact is otherwise. If reference to the Qur'an is made, the real philosophy of the dower can easily be ascertained.

Another critic writes: "As man and woman have been created equal, the payment of any price or wages by one to the other does not stand to reason. Just as man needs woman, woman needs man. In this respect both of them are on an equal footing. Hence it would be unfair to enjoin upon either of them to bear the expenses of the other. But as man had the right of divorce and woman had no guarantee of the continuity of a joint life with him, she was given a right to demand a sort of security from him".

He adds: "In case man does not have an absolute right of divorce, no justification is left for the continuation of the custom of dower.

It is clear from what we have said that these arguments are baseless. A dower is neither a price nor wages. No doubt man and woman need each other, but their position is not the same. Nature has placed them into two different positions.

It is still more baseless to describe dower as a financial security against the right of divorce. On top of that, to claim that this is the reason why Islam has prescribed it, is the height of absurdity. We would like to ask such people why, in the first instance, did Islam give the right of divorce to man. Had this right not been given, there would have been no need of any security? Furthermore, this statement means that when the Holy Prophet fixed the dower of his own wives, he provided them with a security against himself. Similarly, when he fixed the dower of Lady Fatimah at the time of her marriage with Imam Ali, he did so because he wanted to provide the former with a security against the latter.

If, for the sake of argument, we admit that dower is a form of security, then the question arises as to why the Holy Prophet counselled the women to consent formally to surrender

their dower to their husbands as a gesture of goodwill. Why did he describe such an act as meritorious and rewarding? Why did he advise that, as far as possible, the amount of dower should not be large? Does not all this show that the Prophet considered dower to be a gift and regarded its voluntary surrender as a means of strengthening and consolidating love between a husband and a wife?

If Islam looked upon dower as a security, why did the Qur'an say: *"Give the women their dower as a free gift';* and why did it not say: "Give the women their dower as a security?" Furthermore, it appears that the critic is under the impression that, in the early days of Islam, dower had the same form as it has today. At present, the common practice is that the husband, at the time of marriage, undertakes to pay a certain amount, but usually the wife does not demand its actual payment, except in the cases where a dispute develops between the two. This type of dower may assume the form of a security. But, during the early Islamic period, the usual practice was to make a prompt payment of the amount promised. In these circumstances, it cannot be said that dower is a form of security.

History shows that the Holy Prophet was never willing to give any woman in marriage without fixing her dower. In this connection the following story has been mentioned in the books of both the Shiah and the Sunnis, with slight variations:

A woman came to the Prophet and said: "0 Messenger of Allah! Accept me to be your wife". The Holy Prophet kept quiet and said nothing. The woman sat down.

One of the companions of the Prophet rose and said:

"O Messenger of Allah! If you are not inclined, I am prepared to marry her". The Holy Prophet asked: "What dower will you give[9]" "I have nothing". "That won't do. Go to your house. Maybe you will find something to give this woman as dower".

The man went to his house. Soon he came back and said:

"I could find nothing in my house". The Prophet said: "Go again and search. Even an iron ring will do".

The man went again. He came back and said that he could not find even an iron ring. He said that he was willing to give the clothes he was wearing to the woman.

One of the companions of the Prophet, who knew the man well, said that he was aware that the man had no other clothes. So he asked the Prophet to assign only that of his clothes as dower to the woman.

The Prophet said: "If half of his clothes is assigned as dower, who will wear it? Whichever of these two will wear it' the other will go unclothed. That's not possible".

The suitor was sitting in his place. The woman was also waiting for the final decision. In the meantime, the Prophet and his other companions were busy talking about some other subject. When a long time had elapsed, the man rose to go away. The Holy Prophet called him saying: "Come here". He came. The Prophet asked him: "Do you remember the Qur'an?" "Yes, 0 Messenger of Allah! I remember such and such Surah". "Can you recite it from memory?" "Yes, I can". "Very good. That's right. I give this woman in marriage to you and her dower is that you teach the Qur'an to her".

The man grasped the hand of the woman and both of them took their leave.

There are some other points also connected with the question of dower, but we leave them for the present.

DOWER AND MAINTENANCE - III

We have mentioned the Islamic point of view regarding dower and its philosophy. Now let us take up the question of maintenance.

It should be kept in mind that like dower, maintenance also has a peculiar form in the Islamic law, and it should not be confused with the practice in the non-Muslim world.

Had Islam allowed man to engage woman to work for him and to appropriate her earnings, the reason why a husband has to maintain his wife would have been evident, for it is clear that if a man exploits another man (or an animal) economically he has to bear his (or its) expenses of life. If a coachman does not give fodder and barley to his horse, it will not carry a load for him.

But Islam has not allowed man to exploit woman. On the other hand, woman has a right to own property and to earn money, and a husband has no right to lay his hands on what belongs to his wife. At the same time, it is incumbent on him to meet the expenses of the family. He has to maintain his wife and children and to bear the expenses in connection with servants, the household etc. For what reason?

Unfortunately, people with a Westernised mentality are not prepared in the least to think over such things. They often repeat the same adverse remarks, in the context of Islamic law, which the Europeans justifiably make against their own legal system.

It is perfectly right to say that the maintenance of a wife in the West, up to the beginning of the 19th century, was a sign of the slavery of woman, because there the woman was bound to run the household of her husband gratis, without having any right of owning anything. Obviously in this case whatever food, clothing etc. was given to her was not different from the daily ration of a prisoner or the portion of fodder given to a beast of burden.

However, the case of Islam is quite different. It is a unique system in the world which absolves woman from administering the domestic life of man, gives her complete economic independence, and at the same time exempts her from making any contribution to the family budget. Here we have a different philosophy, which of course, requires our special consideration.

LAYING THE EUROPEAN WOMAN UNDER AN INTERDICTION UP TO THE SECOND HALF OF THE 19TH CENTURY

Dr. Shayagan says: "The economic independence of woman which has been recognised by the Shiah law from the very beginning, did not exist in Greece, Roman, and Japan till recently in most of the countries. She, like a minor and a lunatic, was interdicted from entering into any transaction in respect of her property. In England, where formerly the personality of woman was completely merged with that of her husband, two laws were enacted, one in 1870 and the other in 1882 which removed the ban. In Italy a law, passed in 1919, removed the

restrictions imposed on woman. The German Civil law of 1900 and the Swiss Civil law of 1907 gave woman the same rights as her husband had.

"However, the Portuguese and the French laws still impose a restriction on a married woman though the French law of 1938 has modified her position to a certain extent".

As you may observe, a century has still not passed since the first laws of woman's economic independence vis-a-vis her husband were enacted in England in 1882, and the so-called ban on married woman was removed.

WHY EUROPE SUDDENLY GAVE ECONOMIC INDEPENDENCE TO WOMAN?

Now let us see how it happened that a century ago such an important event took place? Was the human conscience of the European suddenly awakened and they thus realised the injustice of their ways?

Will Durant in his book, 'Pleasures of Philosophy' answers this question. There we come across a shocking truth. We come to know that the European woman should in fact be thankful for her emancipation and for acquiring proprietary rights by her to the machines and not to any man. She should bow her head in reverence for the enactment and gratitude of the law of economic independence by the British Parliament, and not to the industrialists, who wanted to earn more profits and pay less wages.

Will Durant says: "The quick changes in the habits and customs, older than the history of Christianity, are explained only by the abundance and diversity of machines. The emancipation of woman is a by-product of the industrial revolution.

A century ago, it was very difficult for men in England to find jobs. But advertisements wanted them to send their wives and children to the factories. The employers were interested only in their profits and shares and did not bother themselves with ethics and morals. It was the patriotic industrialists of the 19th century who unconsciously conspired to disrupt the domestic life of people.

The first step towards the emancipation of our grandmothers was the law of 1882. According to it, the women of Great Britain became able to enjoy an unprecedented privilege. They were given the right to keep the money they earned with themselves. This law, representing high Christian and moral values, was enacted by the mill-owners in the House of Commons. Since that year the women have been liberated from the drudgery of household work, and have instead become involved in the drudgery of the stores and factories".

As you may observe, it was the industrialists and mill-owners of England, who, for the sake of their own material gains, took this step for the benefit of woman.

THE QUR'AN AND THE ECONOMIC INDEPENDENCE OF WOMAN

Islam, 1400 years ago, laid down the following law:
"Men have a portion of what they have earned and women have a portion of what they have earned" (Surah an-Nisa, 4: 32).
In this verse the Holy Qur'an has recognised the title of both men and women to the fruits of their labour.
In another passage the Qur'an says: *"The men have a portion of what (their) parents and the kin left and the women have a portion of what (their) parents and the kin left."* (Surah an-Nisa,4 :7)
This verse confirms the title of woman to her inheritance, which was not recognised by the pre- Islamic Arabs.

COMPARISON

The Holy Qur'an granted economic independence to woman thirteen centuries earlier than Europe, with the difference that:
(1) The considerations which motivated Islam were purely human, moral and divine. There did not exist any such motives as the greed of the mill-owners of England who, to fill their own bellies, passed a law and then proclaimed loudly through-out the world that they had officially recognised the rights of woman, and had established equality between man and woman formally.
(2) Islam gave equal rights to woman, but did not disrupt the basis of her domestic life, nor did it instigate the wives and daughters to revolt against their husbands and fathers. Islam brought about a great revolution, but did so calmly and safely.
(3) According to Will Durant all that the Western world did was to save woman from the drudgery of household work and to foist on her the drudgery in stores and factories. In other words, Europe opened one shackle and bound her hands and feet with another. Islam delivered woman from the slavery of man, in the house as well as in the field, and took off from her shoulders every obligation to meet her own or her family expenses. According to the Islamic point of view, she has every right to earn money, to keep it safe and to develop her wealth, but at the same time she should not be put under the pressure of the compulsions of life, which may ruin her beauty and vanity, which always go hand-in-hand with mental satisfaction.
But alas! The eyes and ears of some of our writers are so closed and blocked that they are unable to perceive the most obvious historical facts and philosophical truths.

CRITICISM AND ANSWER

A lady, criticising the law of maintenance, says that it requires a husband to provide food, clothing and shelter to his wife in the same way as an owner of a horse or a mule is required to provide fodder and shelter for his animal.

May we ask the critic how she has come to the conclusion that a husband owns his wife or that ownership is the reason why her maintenance has been made obligatory on him. What sort of ownership is this that the master cannot even ask his bondsmaid to give him a glass of water? What sort of ownership is this that whatever the bondsmaid earns belongs to her and not to her master? What sort of ownership is this that the bondsmaid can, if she likes, ask for wages for the slightest service done by her to her master? What sort of ownership is this that the master has no right to force his bondsmaid even to suckle his child, who is by the way her child also?

Secondly, is it a fact that a person whose expenses are borne by another person becomes a slave of the latter? According to the law of every country in the world, it is the responsibility of the father, or the father and mother both, to bear the expenses of the children. Can it be said that the children are owned by their parents? Islam has made it obligatory on the children to support their parents, if they are in need of pecuniary help. Does this mean that, according to Islam, the parents are owned by their children?

THREE KINDS OF MAINTENANCE

Islam recognises three kinds of maintenance:

(1) The person who owns animals has to maintain them. The basis of this kind of maintenance is ownership.

(2) Man has to bear the expenses of his children, if they are minors or if they are poor. Similarly, one has to maintain one's parents if they are poor. The basis of this kind of maintenance is not ownership. It is based on natural rights. The children have a natural claim on their parents, because they have brought them into this world. Similarly, the parents have a claim on their children, whom they begot. This kind of maintenance is conditional on need.

(3) A husband has to maintain his wife. The basis of this kind of maintenance is neither ownership nor any natural right in the above mentioned sense. Nor is it conditional on any need, pecuniary or otherwise.

Even if the wife happens to be a millionairess, having a very vast income, and her husband happens to be comparatively poor, it is still the duty of the husband to meet the family expenses, including the personal expenses of his wife. Another distinctive feature of this kind of maintenance is that, unlike the first two kinds, it is judicially enforceable. What is the basis of this kind of maintenance? We shall discuss this point in the next chapter.

DOES THE MODERN WOMAN NOT WANT DOWER AND MAINTENANCE?

We have already stated that, from the Islamic point of view, it is the responsibility of man to meet the expenses of the whole family, including the personal expenses of his wife, who has no similar responsibility. Even if the wealth of woman is several times that of man, she is not

bound to make any contribution to the family budget. Her contribution, if any, will be voluntary.

On the other hand, man is bound to meet the personal expenses of his wife, but he is not allowed by Islam to exploit her economically or to force her to work for him. In this respect the maintenance of wife is similar to that of parents, which is also obligatory in certain circumstances. But a son has no right to engage his parents to work for him out of consideration for meeting their expenses, which is his duty.

SAFEGUARDING THE ECONOMIC INTERESTS OF WOMAN

Islam, in an unprecedented manner, has safeguarded the economic and financial interests of woman. On the one hand it has given her economic independence, and restrained man from misappropriating her money or having any control over her property, and on the other it has taken off from her shoulders any responsibility to meet family expenses. Thus she is not in need of running after money.

The Westerners, who want to criticise the law of maintenance, find no alternative but to resort to a big lie. They say that the philosophy of maintenance is that man considers himself to be the master of woman and engages her to work for him. As the owner of an animal he has to bear its expenses, so that the animal may continue to serve him, in the same way and with the same purpose the law of maintenance has made it obligatory on man to provide, at least, some bread and butter to his wife.

In fact, if one wants to attack this Islamic law, one may find it rather easier to criticise it in the most eloquent terms, for having shown more favour to woman and for burdening man with more responsibility, than criticising it in the name of supporting the cause of woman.

The truth is that Islam has intended neither to favour man nor to favour woman. Islam is not partial to either of them. It has not only aimed at the welfare of both man and woman, but also of their prospective children and the entire humanity. Islam believes that the only way how man, woman, their children and humanity can attain prosperity is not to ignore the natural laws and commands of the Almighty Creator.

As we have repeatedly pointed out, Islam has always kept this fact in view that man is a symbol of need, desire and pursuit and woman is a symbol of indifference. Islam portrays man as the customer and woman as the owner of goods. From the Islamic point of view, man should consider himself to be a beneficiary and should be prepared to bear her necessary expenditure. Man and woman should not forget that, in the matter of love, they have been allotted two different roles by nature. Marriage can be stable and enjoyable only when they play their respective natural roles properly.

Another reason why the husband has been made responsible for maintaining his wife is that it is she who suffers all the pains in connection with child-bearing. Man's natural role in this respect is only momentary and pleasure-giving. It is the woman who has to bear all the troubles connected with pregnancy, delivery, suckling and nursing the child.

All these functions consume her energy and reduce her working capacity. If it is decided that the law will give no protection to woman and will put both man and woman on an equal

footing with regard to contributing to the family budget, the position of woman would no doubt become unenviable. As we know, among those animals also which live in pairs, the male always protects the female and helps her during breeding in securing food.

Furthermore, from the viewpoint of the working capacity and the ability to perform hard and rough and productive and economic jobs, man and woman are not equal. If relations between them are estranged and man refuses to spend anything on her out of his income, woman would hardly be able to compete with him.

In addition to all this, woman needs more money than man. Self-beautification and self-decoration are a part of woman's life, and one of her main necessities. What a woman spends in her ordinary life on self- beautification is several times more than what a man spends on such items. Her tendency to beautification has created in her a longing for variety and diversity. To a man a suit of clothes is usable as long as it is not worn out, but a woman wears a dress only as long as it gives a new look. Often a dress or an ornament loses its value after being worn only once. Woman's earning capacity is less than that of man, but her consumption of wealth is far greater.

Woman's womanhood, that is her beauty, vivacity and pride, demand more comfort and less effort. If the circumstances force her to work hard and make constant efforts to earn money, her vanity is shattered. The financial worries will produce the same kind of wrinkles on her face, as they produce on the face and forehead of a man. It is often heard that those poor Western women, who have to work in factories and workshops to earn their livelihood, wish that they could lead the life of an Eastern woman. Obviously, a woman who is not mentally satisfied can neither look after herself properly nor can she be a source of delight to her husband.

Therefore, it is not only in the interest of woman, but also in the interest of man and the family atmosphere, that woman should not be forced to shoulder the crushing burden of earning her livelihood. Man also wants that the atmosphere at home should be such that he may feel relaxed and may forget all his worries. Such an atmosphere can be provided by woman only, if she herself is not tired and worried. What a pity if man comes home tired and exhausted and meets a wife who is more tired and more exhausted than he himself'.

Hence woman's relaxation, vivacity and satisfaction are of the utmost importance to man also.

The reason why men are prepared to put their hard-earned money willingly at the disposal of their wives and to allow them to spend it liberally on their own comforts is that they realise that they need wives for their own mental peace. They realise that Allah has made woman a source of comfort and relaxation to man. The Qur'an says: *"From that He made his mate so that he may find comfort in her"*. (Surah A'raf, 7:189). Man realises that, whatever he spends to satisfy his wife, he spends indirectly to ensure his own satisfaction and happiness and to brighten his family life. He knows that to be able to provide comfort to each other, at least one of the two spouses must not be overcome with exhaustion and, in this division of labour, it is man who is more suited to take part in the struggle of life and woman is more suited to play the role of a comforter.

Man and woman have been so created that from the financial and material point of view woman has to depend on man, and from the spiritual and moral point of view man has to

depend on woman. Woman cannot satisfy her material needs without the support of man, and that is why Islam has enjoined upon her legal husband (only the legal husband) to support his wife.

If woman wants to live as magnificently as she desires, she must get the support of her legal husband. Otherwise, she will have to depend upon other men, the instances of which are very common, and which, unfortunately, are on the increase.

PROPAGANDA AGAINST MAINTENANCE

The sex perverts have discovered that, if a woman's plentiful financial needs are not satisfied by her husband, she can easily be entrapped by them. That is one of the reasons why there is so much propaganda against the maintenance of the wife by the husband. If you probe the philosophy of the fat salaries paid by commercial organisations to their female employees, you may easily grasp what we mean.

There can be no doubt that abolition of the system of maintenance will lead a woman to prostitution. How can it be possible for a woman, who leads a life independent of man, to administer her natural demands by herself?

The idea of the abolition of this system finds support from those men also who are fed up with the extravagance of their wives. They want to wreak their vengeance upon the extravagant and fashionable women in general through the woman themselves and give it the name of liberty and equality.

Will Durant, after defining 'neo-marriage' as ' a kind of legal marriage with legal contraception, dependence of the right of divorce on the consent of both the parties, and there being no children and no maintenance', says: "The fashionable women of the middle class will soon cause the vengeance of the hard-working man to be wreaked upon the entire female sex. Marriage will undergo such a change that the idle women, who are simply expensive pieces of decoration, will no longer exist. Men will ask women to bear their own expenses. The friendly marriage or neo-marriage requires woman to work till the advanced stage of pregnancy. From now onward she will have to bear all her expenses and thus her liberation will become complete. The industrial revolution is giving manifestation of its cruel consequences. Woman has to work in a factory along with her husband. Woman, instead of sitting idle in a secluded room and compelling her husband to work twice as much to compensate for her unproductiveness, has to be equal to him in work, retribution, rights and obligations.

Will Durant then sarcastically adds: "That is the meaning of woman's liberation".

STATE INSTEAD OF HUSBAND

It is an undeniable fact that child-bearing is the natural function of woman and as such she has to depend upon man for her economic and financial support.

Some people in modern Europe, in their advocacy of woman's liberation, have gone to the extent of supporting the restoration of the matriarchal system. They believe that, with the complete independence of woman and her equality with man in all affairs, in future the father will be regarded as an unnecessary appendage and will eventually be excluded from the family.

At the same time, these people call on the government to take the place of the father and give a subsidy to the women who are unwilling to shoulder the responsibility of forming a family alone, so that they may not stop bearing children and the human race may not come to an end. In other words, woman, who, so far, was a dependent and, according to some critics, a bondsmaid of man, will in future become a dependent and bondsmaid of the government. The duties and rights of father will be transferred to government.

One can wish that these people, who are bent upon blindly pulling down the sacred family structure founded on celestial laws, had given some thought to the consequences of their action.

Bertrand Russell in his book, 'Marriage and Morals', discusses the question of the government's cultural and hygienic intervention in connection with children. He says: "Apparently the father is losing his importance as a biological cause. Another powerful factor which is effective in dislodging him from his pedestal is women's tendency towards economic independence. The women who take part in voting are mostly unmarried. The married women have more problems than the maidens. In spite of legal safeguards they lag behind in securing jobs. If the married women want to maintain their economic independence, they have two alternatives: either they stick to their jobs and leave the nursing of their children to paid nurses, or receive a subsidy paid to them by the government to enable them to look after their children themselves. In the former case, the number of creches and nurseries will greatly increase, and, from the psychological point of view, the natural consequence of the situation will be that for the children neither a father nor a mother will exist.

The second alternative alone will not do. It has to be supplemented by a legal provision of compulsory re-employment of the mothers, when their children reach a particular age. This method has one advantage. Woman can bring up her children herself without having to depend on her male partner for this purpose In case such a law is actually passed, we shall have to wait to see its repercussion on family morals. It is possible that the law decides that an illegitimate child has no right to subsidy or that in case there are indications that the mother has committed adultery, the subsidy is given to the father. In this case the local police may have to keep a watch on married women. The results of such a law will not be very pleasant and may be embarrassing to those responsible for bringing about this moral development. Consequently, it may be expected 'that the idea of police interference will have to be dropped and the subsidy will be extended to the mothers of illegitimate children also. In this case, the economic role of the father will totally disappear among the working classes, and his importance for his children will be no more than that of a dog or a cat . . . Civilisation, or the civilisation which has so far developed, tends towards weakening the motherly feelings.

To safeguard this civilisation, which has already developed so much, it may be found necessary to give women enough money to find pregnancy definitely profitable. In this case, it will not be necessary that all women or most of them choose maternity. It will be a

profession like any other profession and will be selected by women in earnest. But all these are presumptions. What we mean is that the women's liberation movement is causing the downfall of patriarchy which, from pre-historic days, represented man's victory over woman. In the West it is believed to be a sign of the progress of civilisation that the government is taking the place of the father

As is clear from the above observations, the abolition of woman's maintenance or, as these gentlemen like to describe it, woman's economic independence, will have the following effects:

The father will be excluded from the family or at least will lose his importance. The matriarchal system will be revived. The government will take the place of the father. Mothers will be supported by the government. Motherly feelings will become weak. Maternity will lose its sentimental form and will be turned into a profession.

Obviously, the result of all these developments will be a complete collapse of the family which will mean a downfall of humanity. In such circumstances everything else will be all right, but one thing will be lacking and that is the happiness and enjoyment of mental peace and pleasure, peculiar to family life.

Anyhow, what we mean is that even the supporters of complete independence and freedom of woman and the exclusion of the father from the family circle hold that woman's natural function of child-bearing entitles her to a subsidy and in some cases even hire-charges or wages which, according to them, should be paid by the government. On the other hand, the natural function of man does not give him any such right.

The labour laws of the world, while fixing the minimum wages of a male worker, take into consideration the requirements of his wife and children also, which means that the world labour laws officially recognise that man is responsible to maintain his wife and children.

HAS THE UNIVERSAL DECLARATION OF HUMAN RIGHTS HUMILIATED WOMAN?

The Declaration of Human Rights (article 23, clause iii) says: "Everyone, who works, has the right to a just and favourable remuneration, ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection

Clause (i) of article 25 says: "Everyone has the right to a standard of living, adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other means being not available for livelihood, in circumstances beyond his control".

These two articles imply that every man, who forms a family, has to bear the expenses of his wife and children and that their expenses are considered to be a part of his own expenses.

Though the Declaration of Human Rights specifically states that man and woman have equal rights, it does not regard woman 5 maintenance by man as derogatory to this equality. Hence, those who always quote this Declaration as an authority should regard the question of

woman's maintenance by her husband as finally settled and a fait accompli. Will those Westernised people, who call everything Islamic reactionary, allow themselves to outrage even the sanctity of this Declaration, and to describe it as a vestige of woman's slavery?

Furthermore, when the Declaration of Human Rights says that everyone has the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of means of livelihood in circumstances beyond his or her control it not only describes widowhood as a blow to livelihood but also mentions it as parallel with unemployment, sickness and disability. Thus it puts the women in the category of the unemployed, the sick, the disabled and the superannuated. Is this not a big insult to woman? Had such an expression been found in a book or a legal code of an Eastern country, certainly a great hue and cry would have been raised by now.

But those, who are realistic enough not to be influenced by false propaganda and look at things squarely, know well that neither the law of creation, which has made man a means of livelihood for woman, is derogatory to her, nor is the Declaration of Human Rights, which has put widowhood in the category of unemployment, disparaging. Similarly, the Islamic law, which has made woman's maintenance obligatory on man, has in no way made her inferior. It is a fact that she has been created in such a way that she needs man and is dependent on him. Man and woman have been created interdependent with a view to making the union between them stronger and domestic relations, on which human happiness depends, firmer. If woman depends on man financially, man also depends on her for his mental peace. This interdependence brings them closer and unites them better.

Inheritance

In the ancient world woman inherited nothing and, even when she inherited, she was treated like a minor. She had no independent legal personality. According to certain ancient legal systems, a daughter received an inheritance but her children did not. On the other hand, a son not only received an inheritance himself, but his children also inherited the property left by their grandfather. Certain other legal systems allowed woman to inherit but not in the form of a definitely prescribed share, or in the language of the Qur'an 'an appointed share'. They simply allowed a progenitor to make a bequest in her favour, if he so desired.

Historians and investigators have given detailed accounts of the various laws of inheritance found in the ancient world, but we need not go into all their details. For our purpose, the above given summary is enough.

WHY WOMAN WAS DEPRIVED OF INHERITANCE?

The main reason of the deprivation of woman of inheritance was the prevention of transfer of wealth from one family to another. According to the old belief, the women's role in procreation was insignificant. The mothers served only as receptacles, where the seed of the father developed into a child. On this account, they believed that the children of a man's son were his own children and a part of his family, but the children of a man's daughter were not a part of his family, for they were a part of the family of their paternal grandfather. Thus, had a daughter received an inheritance, that would have meant the transfer of property to her children, who belonged to a family unconnected with that of the deceased.

The late Dr. Musa 'Ameed says that in the olden days religion, and not any natural relationship, was the basis of the formation of a family. The grandfather, besides being the social head of his children and grandchildren, used to be their religious head also. The execution of religious ceremonies and rituals was handed down to succeeding generations through the male descendants only. The ancients regarded only men as the means of preserving progeny. The father of the family not only gave life to his son, but also passed to him his religious beliefs and rituals. According to the Hindu Vedas and the Greek and the Roman laws, the power of procreation was confined to men only, and hence family religions were the monopoly of men, and women had no hand in religious affairs except through their fathers or husbands. As they could not take part in the execution of religious ceremonies, they were naturally deprived of all family privileges. Hence, when the system of inheritance came

into being, they were excluded.

The exclusion of woman from inheritance had other reasons also, one of them being that she was not fit to be a good soldier. In a society in which great value was attached to the heroic deeds and the power of fighting, and a warrior was regarded superior to a hundred thousand non-fighters, woman was deprived of inheritance, because she lacked the fighting capacity.

For this very reason, the pre-Islamic Arabs were opposed to inheritance by woman, who could not inherit as long as a male member of the family, howsoever distant, existed. That is why they were greatly surprised, when the Qur'an expressly said: *"For men is a share of what the parents and the near relatives leave, and for women is a share of what the parents and the near relatives leave, whether it be little or much - an appointed share',* (Surah an-Nisa, 4:32)

It so happened that the brother of Hassan bin Thabit, the famous poet, died in those very days, leaving behind a wife and several daughters. His paternal cousins appropriated all his property and did not give anything to his widow or daughters. The widow complained to the Holy Prophet who called her deceased husband's cousins. They said that a woman was unable to carry arms and to fight the enemy. It was the men who defended themselves and the women. Hence, they alone had the right to inherit the property. Thereupon, the Holy Prophet conveyed to them the command of Allah, as revealed in the above quoted verse.

INHERITANCE OF AN ADOPTED SON

The pre- Islamic Arabs sometimes adopted someone as their son. The adopted son like a real son, was considered to be an heir. The custom of adoption existed among other nations also, including the ancient Romans and the Iranians. The adopted son, being considered to be just like a real son, enjoyed such privileges as were not allowed to the lineal daughters. These privileges included the right of inheritance. Similarly, marriage with the wife of an adopted son was prohibited. The Holy Qur'an abolished these customs.

INHERITANCE OF AN ALLY

Another custom, which was common among the pre-Islamic Arabs and was abolished by the Qur'an, was that of alliance. Two persons unrelated to each other, used to enter into an alliance, committing to each other by oath: "Your blood is my blood; any aggression against you will be an aggression against me; you will inherit from me and I from you". According to this alliance, both of them defended each other during their lifetime, and whosoever died first the other took his property.

WIFE, A PART OF INHERITANCE

Sometimes the pre-Islamic Arabs counted a widow to be a part of her deceased husband's property and appropriated her accordingly. If the deceased had a son from another wife, he could throw a piece of cloth on the widow as a mark of acquiring her. Then he could dispose her at his will and pleasure. He had the option of either marrying her himself, or giving her in marriage to someone else and taking her dower. This custom, which was not peculiar to the Arabs, was abolished by the Qur'an.

In regard to inheritance, many aspects of the ancient Indian, Japanese, Roman, Greek and Iranian laws also were objectionable and discriminating. For lack of space we cannot reproduce all that has been written by the experts in this respect.

INHERITANCE OF WOMAN DURING THE SASANIAN PERIOD

The late Saeed Nafisi in his book, 'Social History of Iran from the Sasanian times to the end of the Umayyad period", writes: "Another interesting feature of the Sasanian culture was that, when a boy reached the age of puberty, his father married him to one of his own numerous wives. During that period, woman had no legal personality. The father and the husband had vast powers over her property. It was the duty of the father or the head of the family to marry a girl when she reached the age of 15 But the age of marriage for the boys was 20. After being married, a girl was not entitled to receive any inheritance from her father or guardian. She had no right to choose her husband herself, but she could contract an unlawful marriage if her father failed to marry her when she reached the age of puberty. In that event also she did not inherit from her father.

The number of women a man could marry was unlimited. The Greek sources mention cases, where a man had several hundred women in his house. The Zoroastrian religious books show that the rules of marriage during the Sasanian period were complex and confused.

WOMAN'S INHERITANCE IN ISLAM

The Islamic law of inheritance is free from all the short-comings and defects of the past. The only thing, which is objectionable in the eyes of the upholders of equality between man and woman, is that the share of woman is half that of man. According to the Islamic law, a son receives twice as much as a daughter, a brother twice as much as a sister and a husband twice as much as a wife. The case of father and mother is the only exception.

If a deceased has children and his parents are also alive, each of his parents will get one-sixth of the property left by him. It is because of woman's special position with regard to dower, maintenance, military service and some of the criminal laws, that her share has been fixed at half that of man.

For reasons mentioned earlier, Islam considers dower and maintenance essential and effective

in the consolidation of a marriage. They ensure domestic harmony and coherence. The abolition of them is likely to shake the family structure and to push woman to prostitution. The dower and maintenance being compulsory, naturally woman's financial commitments have been reduced and man's burden has proportionately increased. To compensate man for his extra burden, his share in inheritance has been fixed at twice that of woman. It is dower and maintenance which have reduced woman's share.

OBJECTION OF THE WESTERNISED

Some Westerners, while criticising woman's lesser share in inheritance and using it as a propaganda weapon against Islam, assert that, after all, there is no necessity of lessening woman's share in inheritance and compensating her for the loss by allowing her dower and maintenance. Is there any need of going into bylanes and adopting out-of-the-way methods? Why should not woman's share, from the beginning, be equal to that of man so that we may not he compelled to compensate her by allowing her dower and maintenance?

The gentlemen, who happen to be more royalists than the king, have mistaken the cause for the effect and the effect for the cause. They think that the dower and the maintenance are the effects of women's peculiar position with regard to inheritance, whereas the real position is just the reverse. Further, they seem to be under the impression that the financial aspect is the only consideration. Had that been the only consideration, obviously there would have been neither the need of the system of dower and maintenance nor that of disparity between the shares of man and woman. As we have mentioned earlier, Islam has taken into consideration many aspects, some of them natural and others psychological. It has considered woman's special needs, arising out of her procreative function. Man naturally has no such needs. Besides, on the one hand, woman's earning capacity is less than that of man and, on the other, her consumption of wealth is more. In addition, there are several other finer aspects of their respective mental make-up. For example, man always wants to spend for the sake of the woman of his choice. Other psychological and social aspects, which help in the consolidation of the domestic relations have also been considered. Taking all these points into consideration, Islam has made dower and maintenance obligatory. Thus, it is not simply a financial question, so that it may be said that there is no need of reducing woman's share at one place and compensating her at another.

OBJECTION OF THE HERETICS OF THE EARLY ISLAMIC ERA

We have said that the dower and the maintenance are a cause and the peculiar position of woman with regard to inheritance is its effect. This point is not a new discovery. It came up even in the early days of Islam.

In the second century of the Hijri era there lived a man named Ibn Abi al-'Awja, who did not believe in religion. Taking advantage of the religious freedom of that period, he openly gave

expression to his atheistic ideas. Sometimes he even came to the Masjid al-Haram (in Mecca) or Masjid al-Nabi (in Madina) and engaged in arguments on the principles of Islam with the scholars of that time. One of his objections against Islam concerned inheritance. He used to say: "What is the fault of the poor woman that she gets one share whereas the man gets two". According to him, this was injustice to woman, the Imam Ja'far as-Sadiq (P), in reply to him, said that it was so, because woman was exempted from performing military service. Further, Islam had enjoined upon man to pay her dower and maintenance and, in certain criminal cases where the kinsmen of the offender had to contribute to the blood-money, she was exempted from such payment. These were the reasons why her share had been reduced. Thus Imam Sadiq expressly attributed woman's peculiar position, with regard to inheritance, to the existence of the law regarding dower and maintenance and her exemption from military service and the payment of blood- money.

The other Imams also answered likewise when a similar question was put to them.

Divorce

DIVORCE - I

In no age other than ours has so much attention been paid to the danger of the disintegration of the family and its harmful consequences, and again, in no age other than ours has man been faced with the real danger of such a disintegration.

THE GROWTH OF DIVORCE IN MODERN LIFE

In the past much attention was not paid to the problem of divorce, its causes and its harmful effects, nor were any measures devised to prevent its incidence, yet the cases of divorce were few and far between. There is no doubt that the difference between the past and the present is due to the fact that now the causes, which lead to divorce, have increased. The social life has taken such a turn that now there are more chances of the disruption of the family bond, and that is why the efforts of the intellectuals and the public-spirited people have, so far, borne no fruit. Regrettably, the future bodes more danger.

The American magazine, 'Newsweek' in an interesting article under the heading, 'Divorce in America', writes that it is easier in America, to get a divorce than to get a taxi.

'Newsweek' further writes that two proverbs about divorce are better known among the American people than any other. One is that "the hardest conciliation between husband and wife is better than divorce". It is 400 years old. The other which represents a diametrically opposite view has gained currency during the second-half of the 20th century. It says that "the second love is more pleasant than the first".

The article shows that the second proverb is more operative in America. The illusion of divorce attracts to itself, not only the newly-wed, but even their mothers, and the couple who were married a long time ago. Since the Second World War onward, on an average, the number of cases of divorce has not been less than 400,000 per annum. Out of the dissolved marriages, 40% had remained intact for 10 years or more and 13% for more than 20 years. The average age of two million women divorces was 45 years. Some 62% of them had

children under 18 at the time of the dissolution of their marriages. These women, in fact form a special generation.

Though the American woman feels quite free after divorce, yet the divorced, whether young or the middle- aged, are not happy. Their unhappiness can be gauged from the ever-increasing number of women who call on the psychiatrists or have recourse to alcoholism. Out of every four women divorcees, one is an alcoholic. The average cases of suicide among these women are three times more than among women having husbands. In short as soon as a woman comes victorious out of a divorce court she realises that life after divorce is not a bed of roses. The world can hardly have a good opinion of a woman who dissolves her marriage, the strongest form of human relationship. Society may respect such a woman and even envy her, but cannot look upon her as a person who entered the life of another and brought about happiness.

In the course of this article in Newsweek the question has been raised whether the ever-growing cases of divorce are mostly due to temperamental incompatibility between husband and wife, or some other causes. The writer of the article says that even if incompatibility is accepted to be the cause of separation among the newly-wed couples, how can one explain the cases of those who had been leading a married life for a long time. Taking into consideration the facilities which the American law provides in connection with divorce it may be said that incompatibility is not the reason of separation in the case of a marriage which has lasted out for 10 or 20 years. In the age of contraceptive pills, sexual revolution and improvement in their legal status, many women have come to believe that delight and pleasure are preferable to the stability of married life. You often see that a husband and a wife live together for years, have children, share each others' joy and grief and then suddenly the wife seeks a divorce, without any palpable change having taken place in the material or conventional position of the husband. The reason is that, till yesterday, the woman was willing to bear the boredom of life, but today she is not inclined to do so.

The increase in the cases of divorce is not confined to America. Wherever the modern Western ways have permeated to a considerable degree, the figures of divorce have gone up. Even in the East, divorce is far more common in the modernised big cities than in the small towns and the countryside.

THE DIVORCE-GENERATING ATMOSPHERE OF AMERICA

We have already quoted Newsweek as saying that the American woman gives preference to merry-making over the stability of domestic life. Now let us take a step forward and see why she has adopted such an attitude. It is certain that this attitude is not natural and inherent. It has certain social reasons behind it. It is the American atmosphere which has given this

mentality to the American woman. Some Westerners are working hard to push the woman of the East to the way the American women have gone. If they succeed, the fate of the Eastern woman and the Eastern family will not be different from that of the American woman and the American family.

A prominent French daily writes that in more than 200 restaurants and cabaret houses in California waitresses work in topless outfits. The topless swimming costume has been recognised as the working-dress in San Francisco and Los Angeles. In the city of New York there are many cinema halls which show only sexy films and the nude pictures of women can be seen displayed in front of their entrances. The names of sexy films are of this kind: "The men who swap their wives", "The girls who are immoral", 'The dress which does not hide anything". ~ the libraries there are very few fiction books which do not bear a nude photo of a woman on their covers. Even the classical books are no exception. Such titles as "Sexual Behaviour of American Husbands", "Sexual Behaviour of a Man of the West", ' Sexual Behaviour of Young Men Below 20", "New Sexual Methods Based on the Latest Information", are very common. The writer of the article in the French daily asks with surprise and apprehension: "Whither America?"

In such an atmosphere, if the American woman has lost her balance and gives preference to pleasure-seeking over faithfulness to her husband and family she is not to blame. It is the social atmosphere which has struck at the very root of the sacred family system.

It is surprising that the leaders of our age give, on the one hand, an impetus to the causes of divorce and the disintegration of family life and, on the other, raise a hue and cry that the rate of divorce has gone up so high. This is just like putting a man to sweep a chimney and then asking him not to stain his clothes.

FIVE THEORIES

Now let us see whether, in principle, divorce is good or bad.

The question is whether it is good to keep the door to divorce wide open, even at the risk of the disintegration of family life? If it is good, there is no harm if the rate of divorce goes up. In case, however it is not advisable, should a total ban be imposed on divorce, and conjugal union be made eternal? The third alternative is that divorce should not be banned legally, for in certain circumstances it is unavoidable, but at the same time society should take every possible action to do away with the causes of friction and separation between the husbands and the wives, and save the children from becoming homeless. Obviously, the law can do nothing if society itself encourages the causes which lead to divorce.

If divorce is not to be totally banned, in what form should it be allowed? Who should exercise the right of divorce, should only man or only woman, or both? In the last alternative, should man and woman have the same procedure for severing the bond of marriage, or should each sex have a separate procedure?

In all, these are the five theories in respect of divorce:

(1) Free divorce without any legal or moral restriction. There are those who look at marriage only from a viewpoint of pleasure-seeking; who attach no sanctity to it; and who do not take into consideration the social value of home and family. They think that the sooner the bonds of marriage are removed and replaced, the more pleasure will be afforded to man and woman. He who says that the second love is more pleasant supports this theory. In this theory not only has the social value of the family been forgotten, but also the delight and satisfaction, which the stability of a conjugal union affords, has been ignored. So, this theory is the most puerile and immature.

(2) Marriage is a sacred undertaking. It is a union of hearts and souls which must be kept safe and intact. The word divorce should be expunged from the dictionary of human society. The woman and the man who marry each other should know that, except for death, nothing can separate them.

This is the same theory, which for centuries has been advocated by the Catholic Church, and is still being advocated.

The supporters of this theory are on the decrease in the world. Now only Italy and the Catholic Spain adhere to it. We often hear that, even in Italy, men and women are raising their voices against this law and efforts are being made that the law of divorce should be officially recognised. Many people are no longer willing to continue to suffer the boredom of their unsuccessful marriages.

Some years ago, the Daily Express published an article under the heading, "Marriage in Italy Means Bondage for Woman". This article said that, at present, owing to the non-existence of divorce, many people in Italy have to resort to unlawful sexual relations. More than five million Italians believed that their lives were nothing but sin.

An Italian daily wrote that the prohibition of divorce had created a big problem for the Italian people. Many of them had renounced their Italian nationality for that very reason. When an Italian agency organised an opinion-poll, 97% of the women replied in the negative to the question whether divorce was repugnant to the religious principles.

Still the Church sticks to its view and continues to adduce arguments in support of it.

There is no doubt that marriage is a sacred bond and it should be lasting and durable. But it can last only as long as both the spouses co-operate with each other. There are situations when a mutual understanding between a wife and her husband is not possible. In such circumstances the forces of law cannot be used to keep them attached to each other in the name of a conjugal bond. The theory of the Church has been a complete failure. It is not unlikely that the Church itself may be compelled soon to revise its views. Hence, we need not discuss this theory any further.

(3) Marriage is dissoluble by man and not by woman. In the ancient world many people held such a view, but now we do not think it has any supporters. So we need not discuss it also.

(4) Marriage is a sacred institution and the domestic system is respectable, but the way to divorce, with certain conditions, should be open to both the spouses and the procedure of dissolving a marriage should be the same for both of them.

The upholders of similarity of family rights, wrongly called equality of rights between man and woman, support this theory. According to these people the same conditions, the same limits and the same restrictions as exist in the case of woman, should also exist in the case of man and the same ways, to get out of the deadlock, as are open to man should be open to woman also. They reject any other solution, which is unjust and discriminating.

(5) No doubt the marriage institution is sacred, the domestic system is respectable, divorce is abominable and it is an essential duty of society to remove the causes which lead to divorce, yet divorce cannot be totally banned and the way out of a deadlock must be kept open to both man and woman. Anyhow, the procedure to be adopted for the dissolution of marriage should be different in their respective cases. Divorce is one of the instances of dissimilar rights of man and woman.

This is the theory which represents the Islamic point of view, and the Muslim countries are partially following it.

DIVORCE (II)

In our age divorce has become a world problem as all grumble and complain about it. Those whose laws prohibit divorce totally complain of the non-existence of a way to escape from unsuccessful and unsuitable marriages. On the other hand, those who have opened the door of divorce, equally for both man and woman, complain about the growing rate of divorce and the instability of domestic life, and its harmful effects. Those who have given the right of divorce to men only express their dissatisfaction on two accounts:

Firstly, some mean people, after years of married life, unexpectedly divorce their old wives who had spent the best part of their youth with them, simply because they suddenly feel eager to have a new wife.

Secondly, some unchivalrous people refuse to divorce a wife, with whom there is absolutely no possibility of a mutual understanding and a continued joint life.

It often happens that, for some reasons, the differences between a husband and a wife reach such a stage that no possibility of reconciliation is left, and they practically separate from each other. In such circumstances, the only sensible way is to sever, legally, the relations which have already been practically severed, and to allow both of them to choose new partners-in-life. But some men, to harass their wives and to deprive them of enjoying a conjugal life, decline to divorce them. They leave the woman, in the words of the Qur'an, "in a state of hanging".

Such people are far away from the teachings of Islam, though they use the authority of the Islamic law for their improper behaviour. Their conduct gives an impression to those who are not acquainted with the depth and the spirit of the teachings of Islam, that this is the way Islam wants divorce to be.

The critics ask sarcastically whether Islam has really allowed men to harass their wives as much as they like, sometimes by divorcing them and sometimes withholding divorce, and at the same time to have the mental satisfaction that they have only used their lawful and legal right.

The critics say that such an action constitutes a glaring example of injustice and cruelty. They ask "If it is true, as the Muslims claim, that the Islamic laws have been organised on the basis of justice and righteousness, what measures have Islam taken to prevent this kind of injustice?"

About the cruelty and injustice of such acts there can be no doubt. Islam, as we shall show, has taken cognisance of this situation and has thought of measures to counteract it. The important question is: What is the proper way of preventing this injustice and cruelty? Are the acts of injustice due to any inherent defect in the law of divorce, or should their real cause be looked for somewhere else? Can they be stopped by modifying the law or are some other measures required?

Islam has its own view as to the solution of the social problems. Some people think that they can be solved either by framing a new law or by changing the existing one. But Islam realises that a law has its own limits. It can be effective only within the range of the dry contractual relations. As for the sentimental relations, it alone cannot do much, and we should have recourse to other measures also.

As we shall show latter, Islam has fully utilised the force of law as far as it can be effective. It has not failed in this respect.

IGNOBLE DIVORCES

First, we take up the present day problem of ignoble divorces.

As a matter of principle, Islam is strongly opposed to divorce. It wants that it should not take place as far as practicable. It allows it only as a last resort in the cases where separation is unavoidable. Those who frequently take a new wife and divorce the old one are denounced by Islam as the enemies of Allah.

The well-known book of traditions, al-Kafi, narrates the following story:

The Holy Prophet asked a man: "What have you done with your wife?"

"I have divorced her", he said.

'Did you find her doing anything wrong?"

"No, I didn't"

The man married again. The Holy Prophet asked him:

"Have you taken another wife in marriage?

"Yes".

Some time later, the Holy Prophet asked him again:

"What have you done with the new wife?"

"I have divorced her".

"Had she done anything wrong?"

"No. She hadn't".

The man married a third time. The Prophet asked him again if he had taken in marriage a new wife. He replied in the affirmative.

After some time the Prophet asked him again:

"What have you done with this wife?"

"I have divorced her also".

"Did you find anything wrong with her?"

No, I didn't"

The Holy Prophet said that Allah dislikes and hates the man who regularly changes his wives, and the woman who regularly changes her husbands. Such people are the enemies of Allah.

It was reported to the Holy Prophet that Abu Ayyub Ansari had decided to divorce his wife. The Prophet knew the woman personally. He also knew that Abu Ayyub's decision was not justified. He said: "Divorcing Umme Ayyub (Abu Ayyub's wife) is a deadly sin".

The Holy Prophet said that Gabriel had exhorted and counselled him so much in respect of women that he felt that it was not permissible to divorce a woman, except when she was guilty of adultery.

Imam Sadiq (P) has reported that the Holy Prophet said:

"There is nothing more pleasing to Allah than the house where a marriage takes place, and nothing is more displeasing to Him than the house where it is severed by divorce"

Imam Sadiq (P) has also said that the word 'divorce' has been mentioned in the Qur'an time and again and its details have been given because Allah hates separation of couples.

AI-Tabarsi in the Makarim al-Aklaq has quoted the Prophet as saying: "Do marry but do not divorce, for divorce shakes the throne of Allah".

Imam Sadiq (P) has said: "No permissible act is more displeasing to Allah than divorce. Allah dislikes those who resort to divorce again and again".

Similar traditions are found in the Sunni books also. Abu Daud in his book, 'Sunan' has reported the Prophet as having said: "Allah has not permitted anything more hateful than divorce' . In other words, though Allah has permitted divorce, He dislikes it the most.

The great religious leaders (Imams) have abstained from divorcing, as far as possible. In their lives the cases of divorce were extremely rare. They resorted to such an action only when they had very solid grounds for it. For instance, Imam Baqir (P) married a woman. She became his favourite, but on one occasion he noticed that the woman was inimical to Imam Ali Ibn Abi Talib and cherished malice against him in her heart. He had to divorce her.

In reply to the question as to why he had divorced her when he liked her so much, the Imam said that he did not want to have a piece of the fire of Hell by his side.

A BASELESS RUMOUR

It is worthwhile to refer here to a baseless rumour fabricated by the unscrupulous Abbasid caliphs. It gained so much currency that it was recorded by a number of prominent writers in their books. According to this rumour, Imam Hasan Mujtaba (P), son of Imam Ali Ibn Abi Talib (P) was one of those who took many wives and divorced them. The rumour was spread nearly a century after the demise of the Imam. It was given currency so vehemently that even many of his devotees believed it, without paying attention to the fact that such an obnoxious act was not worthy of the great Imam and could not be expected of a person who used to go on pilgrimage on foot, and who, more than twenty times, distributed 50% of his entire wealth and property among the poor.

As we know, unlike the descendants of Imam Husayn (P) who were headed at that time by Imam Sadiq (P), the descendants of Imam Hasan (P) co-operated with the Abbasids, during their insurrection against the Umayyads. In the beginning the Abbasids acknowledged their fidelity and devotion to the descendants of Imam Hasan (P), but on becoming successful in seizing power, they betrayed them and put most of them out of their way, either by killing them or by imprisoning them. In pursuance of their policy, the Abbasids started a propaganda campaign against the descendants of Imam Hasan (P), in the course of which they invented many calumnies, one of them being the charge that Imam Hasan's grandfather and the Holy Prophet's uncle, Abu Talib (P), did not embrace Islam and died as an infidel. They wanted to bring out that they themselves, being the descendants of the Prophet's other uncle, who had embraced Islam, were more deserving of being the caliphs. To achieve their purpose they spent huge amounts of money and fabricated a number of stories. A section of the Sunnis, influenced by this propaganda, still believes that Abu Talib was a disbeliever. Though the latest research by some Sunni scholars have clarified the position to a great extent, yet some doubts still linger among a section of them.

Another calumny, fabricated by the Abbasids, was that Imam Hasan (P) succeeded to the caliphate after his father, but, being a licentious person, he could not acquit himself well and had to surrender the caliphate to his keenest rival, Mu'awiyah, from whom he took money,

and made himself busy with marrying and divorcing.

Luckily, the research scholars of our age have exposed the source of this fabrication. The first known person who uttered this lie was a Qazi appointed by Caliph Mansur, and detailed by him to concoct and spread rumours against the Imam. A historian, commenting on this lie, observes that if it is true that Imam Hasan (P) took so many women in marriage, then where are his children? Why is their number so small? After all, the Imam was not sterile and contraception and abortion also was not customary at that time.

We wonder at the simplicity of some of the compilers of the Shi'ah traditions. How could they write that Imam Hasan (P) was in the habit of divorcing women, when they themselves report that the Holy Prophet and the Imams have said that Allah dislikes and denounces a man who habitually divorces their wives. It never occurred to these gentlemen that they had to choose one out of the following three alternatives: (i) Divorce is not a bad thing; (ii) Imam Hasan (P) was not a habitual divorcer or (ii) Imam Hasan (P) did not adhere to the teachings of Islam. But they, strangely, not only believe in the authenticity of the traditions, saying that divorce is detestable to Allah, but also, at the same time, despite being devotees of the Imam, quote the reports that he was a habitual divorcer. They skip over such reports without making any comments on them.

Some of the traditionalists have gone to such an extent that they have reported that Imam Ali (P) was not happy with the way his son behaved. In a public speech he asked the people not to give their daughters in marriage to him, for he was in the habit of divorcing them. But, it is said, the people replied that it was a matter of pride for them that their daughters could become the marriage-partners of a descendant of the Prophet even for a short time.

It appears that some people are of the opinion that divorce is not bad, if the woman concerned and her family consent to it. They think that divorce is loathsome only if the other party does not agree to it, but there can be no objection to it if the woman is content to pass only a few days with the man in whom she takes pride.

Anyhow, that is not the real position. The consent of the woman or her parents does not mitigate the detestableness of divorce. It is detestable because Islam wants marriage to be lasting and the family life to be stable. The consent of the couple concerned does not make the position any different. Islam does not consider divorce to be loathsome only for the sake of any particular class of women. It is a matter of principle.

We have dealt with the question of Imam Hasan (P), not only with a view to repeating a false historical charge against a historical personality, but so to warn those unconscientious people who may indulge in such acts and then to justify their behaviour, may try to cite Imam Hasan (P) as an authority.

There is no denying the fact that divorce as such is loathsome and detestable in Islam.

WHY ISLAM HAS NOT PROHIBITED DIVORCE

Here a few other questions arise. If divorce is so loathsome and so disliked by Allah, why has it not been totally prohibited by Islam? Islam could at least lay down certain conditions for its validity. In that case anybody who wanted to divorce his wife, would have been judicially bound to justify his intended action before a court of law.

The second question is: What does the sentence, "Out of all permissible things, divorce is most detestable to Allah" mean? If it is permissible, it cannot be detestable and, if it is detestable, it cannot be permissible. These are two contradictory terms.

Lastly, has the judiciary, which represents the society, the right to intervene in the matter of divorce to the extent of withholding its implementation till either the husband takes back his decision or it becomes clear that no reconciliation is possible, and hence there is no alternative but to sever the conjugal bond?

DIVORCE (III)

We have said that, from the Islamic point of view, divorce is absolutely detestable. Islam wants the marriage-union to be strong and lasting. At that stage we raised the question that if divorce is so detestable, why has Islam not banned it? Has not Islam prohibited every detestable act like taking wine, gambling, cruelty etc? If the reply is in the affirmative then why has it not totally prohibited divorce by law? It is basically illogical to say that divorce is permissible, but at the same time detestable. If it is permissible, how can it be detestable? If it is detestable, why should it be permissible? Islam, on the one hand, frowns at the man who divorces his wife and, on the other puts no legal obstacle in his way; why?

It is a very pertinent question, and is the key to all the secrets of the problem of divorce. In fact, marriage is a natural and not a contractual relationship. Nature has laid down special rules for it. Other social contracts like sale, hire, mortgage, peace, attorneyship etc. are mere social agreements. Nature and instinct have nothing to do with them. There exists no natural law in respect of them. In contrast, a marriage contract has a special mechanism. It is to be organised on the natural desire of the two parties.

Hence, it is not surprising that a marriage contract has special rules which are different from

those of all other contracts.

NATURAL LAWS IN RESPECT OF MARRIAGE AND DIVORCE

In a civil society the only natural law is the law of liberty and equality, on the basis of which all social rules should be framed. But in respect of a conjugal contract, besides the general principles of liberty and equality, nature has prescribed certain other laws also, which must be adhered to in the case of marriage, dower, maintenance and the last stage of the process, that is divorce. It is of no use to bypass nature. As Alexis Carrel has pointed out, the biological and other laws of life are as hard, ruthless and irresistible as the astronomical laws.

Marriage means attachment and union, and divorce means separation.

Nature has designed the law of marriage in such a way that man acts with a view to appropriate woman, and woman withdraws with a view to fascinate and mislead man. Man wants to take possession of the body of woman and woman wants to captivate the heart of man. The foundation of marriage is laid on love, union and fellow-feeling, and not on mere co-operation and companionship. In the family structure, the fair sex occupies the central position, and her opposite sex the peripheral one. From all this it automatically follows that nature must have had special rules for the dissolution of family life also.

We have quoted earlier an intellectual as saying that mateseeking means an attack on the part of man for the purpose of appropriation and a withdrawal on the part of woman for the purpose of enchantment and deception. Man being instinctively a hunting animal, his action is offensive and for him woman is a trophy which he must win. Mate-seeking is a battle and a struggle and marriage is appropriation and domination.

A contract which is based on love and the feeling of oneness is not enforceable by compulsion. The law can compel two people to respect their contract on the basis of equality, and to co-operate with each other, but it cannot force them to love each other, to be sincere to each other, to make sacrifices for the sake of each other and to share each other's happiness.

If we want to maintain such a relationship between two people we have to adopt some measures other than legal.

According to the natural mechanism of marriage, on which Islamic laws are based, a wife occupies the position of a person deserving love and respect in the family order. If, for some reason, she loses that position and is deprived of the love and attention of her husband, the base of the family structure falls off and the natural order is deranged. Islam looks at such a situation with regret, but it cannot assume marriage to be alive and constant even after the

disintegration of its natural basis.

Islam has taken special steps to ensure that the family life retains its natural form, which means that the wife should be loved and sought after, and the husband should feel attached to her and be ready to serve her.

Islam has urged woman to beautify herself to please her husband, to give a display of her accomplishments for his sake, to satiate his natural desires and not to annoy him by disobedience. It has also exhorted man to love his wife, to show kindness and attachment to her, and not to conceal from her his love for her. These steps have been taken to make the sexual enjoyment limited to the domestic atmosphere, and to keep the wider society a field of work and activities other than sexual. Islam wants that extra-marital contacts between man and woman should be pure and unpolluted. All these steps have been taken with a view to keeping the family organisation free from the danger of dissolution and disintegration.

NATURAL POSITION OF MAN IN THE DOMESTIC LIFE

From the Islamic point of view, it is extremely insulting to a woman that the law should force her to live with a husband who does not like her. The law can force a woman to live with a particular man, but it cannot secure for her the position of a beloved and central figure in the household, which she should have. The law can force a man to support his wife, but it cannot force him to be a devoted husband.

Hence, when man's love and attachment cools down the marriage becomes ineffective from the natural point of view.

Here another question arises. If the wife's love cools down, will the domestic life be affected? Will it continue as it is or will it come to an end? If it will remain intact, then how is it that the lack of love, on the part of the husband, terminates the domestic life and on the part of the wife it does not?

Is there any difference between man and woman? If the lack of love on the part of the wife also terminates the domestic life, then naturally women should also have the right of divorce like men.

In fact, the success of the domestic life depends on the mutual attachment of both the husband and the wife. But as we mentioned earlier, there is a difference between the mentality of man and that of woman. We have already quoted the views of the scientists on this point. Nature has so arranged that woman's true and lasting love comes up only as a reaction of man's attachment to her. Hence, woman's attachment to man is the result of man's attachment to her.

Nature has placed the key of their mutual love within the control of man. If man loves woman and is faithful to her, woman also loves him and remains faithful to him. Woman's faithlessness is definitely a reaction of man's faithlessness.

Nature has put the dissolution of marriage in the hands of man. It is man's apathy and faithlessness that cools down woman's love. On the other hand, woman's indifference and apathy does not affect man. Hence man's indifference to woman unlike the latter's indifference to him leads to woman's in-difference. Man's frigidity is the end of conjugal life, but woman's is not so. If man is sensible and faithful, he can always regain his wife's love by showing affection and kindness to her. It is not insulting to him to compel his annoyed sweetheart by force of law, to continue to live with him, and to pacify her gradually. But it is unbearable for a wife to resort to the force of law to retain her protector and the object of her love.

Of course, this is the case when woman's indifference is not due to the immorality or cruelty of man. If man shows cruelty, the case is different. He cannot be allowed to misuse his position and to harass or ill-treat his wife. We shall discuss this point separately.

Anyway man is in need of the body of woman and woman is in need of the heart of man. That is the difference between the two. Marriage is unbearable for woman if she does not enjoy her husband's genuine protection and sincere love.

VIEWS OF A LADY PSYCHOLOGIST

Recently an article has been published by a French lady psychologist, Beatrice Maryo, who holds a doctorate in psycho-logy and works as a psychiatrist in a hospital of Paris. She herself is a mother of three children.

In this article she has explained very well how a pregnant or a nursing woman needs the kindness and affection of her husband.

She says: "From the time a woman feels that she is going to be a mother soon, she begins to search her body. She repeatedly looks at it and smells it, especially if she is expecting her first child. She feels so inquisitive as if she were a stranger to herself and wants to discover herself for the first time. When she feels the first movements of her tiny little child in her womb, she begins to listen attentively to every sound of her body. The presence of another being in her body makes her so happy that she feels inclined to seclusion and retirement. She wants to be alone with her tiny little child, who has not yet come into this world

"Men, during the period of the pregnancy of their wives, have important duties to perform,

but very regretfully they often shirk their responsibility. The future mother is in need of the feeling that her husband understands her, likes her, and protects her. Otherwise, when she finds that her belly has swollen up; her attractiveness has gone, the morning sickness has commenced, and she is afraid of childbirth pains, she would blame her husband, who had impregnated her, for all her troubles and discomforts. It is the duty of the husband to keep himself, more than ever, at the side of his wife during the months of her pregnancy. The whole family requires a kind and considerate father to whom the wife and the children may talk of their problems, their griefs and their joys. Even if their talk be meaningless or boring, it is still important."

"A pregnant woman very much wants others to talk to her of her child. A woman takes all the pride in becoming a mother. But when she finds that her husband is indifferent to the child, her sense of pride turns into a sense of contempt. She becomes sick of motherhood and pregnancy, and it becomes a sort of mortification to her. It is known that such women suffer a great deal on account of child-birth pangs The relation between mother and child is not a bilateral one. It is a trilateral relation: mother, child, and father. Even if the father is not present (as in the case of divorce), he has an important role in the internal life of the mother, that is in her thoughts and imagination, as well as in her sense of motherhood .

This is what a lady intellectual, who is both a psychologist and a mother, has said.

A STRUCTURE BUILT ON THE BASIS OF SENTIMENTS

A woman depends so much on the sincerity, kindness and protection of her husband that without his earnest co-operation even a child has little sense for her. She can endure the hardships of life only with his help. In such circumstances, how can it be possible to compel her, by the force of law, to remain attached to a man who is not willing to accept her?

Is it not ironical that, on the one hand, we create an atmosphere in which men pay little attention to their wives and sow their wild oats elsewhere and, on the other, we try to thrust their wives on them by the force of law? As a matter of policy, Islam wants that man himself should seek a woman and should like her. It does not want to thrust a woman on him.

As a general rule, where there is a question of love, devotion and sincerity, there can be no question of legal compulsion. If a husband dislikes his wife, it may be a matter of regret, but no force can be used to make him like her.

Let us give an example. As we know, in the congregational prayers there is a condition that the leader of the prayers can be only that person who is pious and in whose piety the followers have faith. In this case, the relationship between the leader and the followers is

based on the piety of the former, and the faith and devotion of the latter. If the body of the followers loses faith in a particular leader, whether rightly or wrongly, this relationship is severed. The law cannot guarantee its continuity. As it is a matter of feelings and sentiments, nobody can be compelled legally to have faith in a particular person. Even if a leader of the prayers possesses the highest degree of piety and virtue, he cannot compel others to offer prayers behind him. It will be highly ridiculous to file a suit in a court of law in this respect. It is even derogatory to the position of the leader of the congregational prayers to try to force people to offer prayers behind him.

The same is the case with the relationship between the voters and the candidate for election. The people will vote for a candidate in whom they have confidence. If they do not elect a particular candidate, howsoever fit and suitable he may be, he cannot sue them.

The only thing which should be done in such cases is to train the people on the correct lines and to raise their intellectual level, so that when they perform their religious duty, they may find out the really righteous people to follow and, when they perform their social duty, they may select the really deserving people to vote for. If, by chance, the people change their opinion subsequently without any rhyme or reason, that can only be a matter of regret, but there can he no question of compulsion or legal action in the matter.

The domestic duty is exactly like the above-mentioned religious and social duties. Islam regards the family as a natural society, for the smooth running of which it has prescribed a particular procedure to be followed strictly.

It is the greatest achievement of Islam that it has prescribed this procedure, for the West has not so far been able to solve its family problems. Not only that, but problems are multiplying and new problems are being added daily to the old ones. Fortunately, as the result of scientific investigations, the position is gradually becoming clear. We are fully convinced that the Western world will gradually accept the Islamic principles and precepts regarding the family laws. Anyhow, we do not believe that the real Islamic teachings are identical with what is being practised today as such.

WHAT CONSOLIDATES THE FAMILY STRUCTURE IS MORE THAN EQUALITY

The present day Western world is enamoured of 'equality', not knowing that the question of relationship between man and woman was solved by Islam 14 centuries ago. As far as the family system is concerned, there exists something higher than equality. For civil society nature has laid down only the law of equality, but for the domestic society it has laid down other laws also. Family relations cannot be organised on the basis of equality alone. All other

laws of nature, which govern these relations, should be recognised and adhered to.

EQUALITY IN CORRUPTION

Unfortunately the word 'equality' has been used so much and so often that its true sense has been blurred. It seldom occurs to anyone that equality means equality in rights. The principle of equality cannot be applied everywhere indiscriminately. It will be most ridiculous to say that everything has become all right, because in the past only men told lies to their wives and now women also tell lies to their husbands. Can we rejoice and proclaim that equality has been established, because in the past only 10% of the marriages ended in divorce and separation, and now, in certain parts of the world, 40% of the marriages end in divorce, and in 50% of the cases, it is the women who initiate the divorce action? In the past it was men who betrayed their wives and indulged in adultery, and women were mostly faithful to their husbands, but today women also betray their husbands and no longer observe chastity. Is this any improvement? Can this be called equality? In the past men often showed cruelty and callousness to their wives. They abandoned their wives and children and ran after mistresses. Now even mothers of several children, after having been married a long time ago, leave their homes to satisfy their lust, following a brief introduction to a stranger at a dance party. Does this mean the establishment of equality?

That is how, instead of seeking the cure of the social ills and consolidating the family life, we are weakening the domestic system and shaking its foundations. Into the bargain, we are happy that we are advancing on the path of equality. If this situation continues, woman will soon surpass man in corruption, perversion and callousness.

Now it is clear why Islam, though it considers divorce most detestable, has placed no legal bar on it. It is also clear how a thing which is permissible can, at the same time, be detestable and loathsome.

DIVORCE (IV)

It is evident from the discussion so far made that Islam is opposed to divorce and the dissolution of family life. It has taken every moral and social step to save it from the danger of dissolution, but it has not resorted to compulsion and has not used the force of law. It is opposed to the use of legal force for preventing man from divorcing his wife and to constrain woman to continue to live with her husband. Islam considers such steps to be unsuited to the position of woman in the family, for sentiments and emotions are the cornerstone of family life.

It is woman who receives the warmth of the tender feelings of her husband and passes them on to her children. If the husband loses interest in his wife, the domestic atmosphere becomes cold and dingy. Even woman's motherly feelings towards her children largely depend upon her husband's attitude to her. According to an eminent psychologist, motherly affection is not an instinct in the sense that it is not subject to increase or decrease. The love and consideration which a man shows to his wife has a considerable impact on her motherly feelings.

In short, woman is to be inspired by man's sentiments and tender feelings to be able to extend her feelings to her children.

Man can be compared to a mountain, woman to a spring and children to plants. The spring must receive rain from the mountain and absorb it to be able to put it out in the form of pure life-giving water for the irrigation of flowers and plants. If rain does not fall on the mountain or it is not absorbed by the earth the spring will become dry and the plants will wither.

Just as rain is vital for the fertility of the soil, and for the thriving of vegetable life, the sentiments and feelings of man towards his wife are vital to the prosperity and happy life of the children as well as for their mother.

When the feelings and sentiments of the husband are so important for the success of family life, how can the force of law be used as a weapon against him?

Islam is strongly opposed to the ignoble action of those who divorce their old wives to have new ones. But, in the opinion of Islam, it is no remedy to force an unchivalrous man to keep his wife against his will. Such an action is not in keeping with the natural law of family life.

If the woman tries to return to the house of her husband by force of law and with the help of the executive authority, her occupation of the house will be tantamount to a military occupation. In such a case she cannot become the lady of the household, nor can she become the sentimental link between her husband and her children. She also cannot satisfy her own emotional need for love and attention.

Islam has taken steps to eliminate cases of divorce, but, as a law-giver, it does not like to force the woman, who is the centre of the family system, to live with an unchivalrous man who does not want her.

The action taken by Islam is just the opposite of what the West has done and is doing. Islam fights against the factors which lead to faithlessness and licentiousness, but it is not willing to force woman to live with a faithless husband. In contrast, the West encourages the factors leading to faithlessness and, at the same time, wants to force the woman to continue to live

with a faithless and licentious husband.

Islam has utilised all its efforts to keep alive the spirit of humanity and chivalry, and though it does not force an unchivalrous man to keep his wife, it has succeeded practically in reducing the cases of unchivalrous divorce to a considerable extent. Others do not pay attention to these points and seek happiness by force and at the point of a bayonet and they have seldom succeeded.

Apart from the cases of divorce, which take place in the West on the demand of women because of incompatibility and, as described by Newsweek, love of pleasure, the number of cases, which have occurred there and are occurring there and are occurring because of the licentiousness of men, is far higher than the number of similar cases in the East.

THE NATURE OF DOMESTIC PEACE IS DIFFERENT FROM THAT OF OTHER KINDS OF PEACE

There is no doubt that there should be peace and harmony between the husband and wife, but the peace and harmony which should prevail in conjugal life is very different from the peace which should exist between two colleagues, two partners, two neighbours and two neighbouring countries. Peace and harmony in conjugal life is similar to the peace and harmony which should exist between the parents and the children. It is equivalent to tolerance, sacrifice, interest in the destiny of one another, breaking the barrier of duality and sharing the happiness and grief of each other. In contrast, peace and harmony between two colleagues, two partners, two neighbours or two neighbouring countries simply mean non-encroachment on the rights of each other. Between the two disputing countries even armed peace is enough. Should a third power intervene and set up a buffer zone between two countries to prevent a direct clash between their armed forces, peace is secured, for political peace means only non-aggression and no clash.

But domestic peace is different from political peace. In this case non-encroachment on the rights of each other is not enough. Armed peace is of no use. What is required is the union of souls, which is something higher and more basic. The same is the case with the peace and harmony between the parents and the children. In that case also something higher than non - aggression is necessary. Unfortunately, for historical and sometimes even regional reasons, the West does not realise the importance of the sentiments. For it, there is no difference between domestic peace and political or social peace. The people of the West think that as peace between two countries can be ensured by the concentration of the forces of a third power on their common border, similarly peace between a husband and a wife can be established by concentrating judicial force on the border of their life. They forget that the success of the domestic life depends on the complete disappearance of all borders.

The Westernised people of the East, instead of taking pride in their own system and pointing out to the people of the West the defects and shortcomings of their (the Westerners') family system, are so absorbed in imitation that they are unable to distinguish between right and wrong. But it will not be too long before the East gets rid of the yoke of the West completely, rediscovers its own personality and learns self-reliance. Here it is necessary to mention two points.

ISLAM WELCOMES EVERY FACTOR WHICH HELPS CHECKING DIVORCE

From what we have written some people may wrongly conclude that we are in favour of allowing men to divorce their wives at their will and pleasure. Of course, that is not the idea. What we mean is that Islam does not want to use legal force against the husband. Otherwise, Islam welcomes every action which may dissuade him from divorce. Islam has intentionally prescribed such a procedure and has laid down such conditions for the validity of divorce that they automatically delay the dissolution of marriage and, in many cases, persuade the husband to give up the whole idea of separation.

Islam has advised those who pronounce the divorce formula, and the witnesses and others, to do their best to dissuade the husband from the idea of divorce. Furthermore, a divorce is not valid unless it is pronounced in the presence of two qualified *'Adil"* (Just) witnesses, who are expected to make their utmost efforts to reconcile the couple.

The present day custom that the divorce formula is often pronounced in the presence of two just persons, who may not even know the couple concerned except their names, is totally un-Islamic.

Anyhow, the necessity of the presence of two qualified witnesses is one of those factors which may dissuade the husband from divorce, provided this condition is observed strictly in its true sense. Islam does not regard the presence of two qualified witnesses as an essential condition for the validity of marriage, which is the beginning of the marital contract, because it does not want to delay a good deed. But it regards the presence of two qualified just witnesses necessary for divorce, which is the end of the contract.

Similarly, according to Islam, divorce is not effective during the woman's menstrual period, though there is no objection to the solemnisation of marriage during that period. Apparently menstruation, being a hindrance in sexual intercourse, should affect marriage and not divorce. But as Islam encourages union and discourages separation, it has allowed marriage during the monthly period and has disallowed divorce during that period. In certain circumstances, it is

necessary to wait for three months before a divorce is allowed.

All these hindrances and obstacles are meant to allow enough time for the tension, which had led to the decision of divorce, to subside, and to enable the husband and the wife to resume their normal life.

Furthermore, in the case of revocable divorce, the husband is permitted to resume conjugal relations during the period of probation *iddah* (waiting period).

Islam has placed another obstacle in the way of the husband, by imposing on him the expenses of marriage as well as those of the period of post-divorce probation for wife and of the care of children. If a man wants to divorce his wife and marry another woman, he has first to pay the maintenance of the first wife, to undertake the responsibility to bear the expenses of the children, and to fix the dower of the new wife. Furthermore, he has to shoulder the responsibility of supporting the second wife and the children which may subsequently be born.

Apart from the responsibility of looking after the children, their woeful plight offers the husband a fearful prospect and prevents him from taking a decision to resort to divorce.

In addition to all this, Islam regards it necessary that in the case of the apprehension of breach and dissolution of family life, a family court consisting of two arbiters, one representing the husband and the other representing the wife, is constituted to arbitrate between them.

The arbiters should do their utmost to settle the dispute between the husband and the wife and, if necessary, they should consult them for this purpose. They can dissolve the marriage only if they find that reconciliation is impossible. As far as practicable, the arbiters should be selected from among the relatives of the couple, provided suitable people are available among them.

The Holy Qur'an says: *"If you fear a breach between the two, appoint an arbiter from his relatives and another from hers. If they both desire compromise, Allah will afford harmony between them. Surely Allah is Ever-Knowing, Aware',* (Surah an-Nisa, 4 : 35).

The author of the Kashshaf, explaining the word, 'arbiter' says that the person selected to arbitrate should be trustworthy, eloquent and capable of bringing about a reconciliation and doing justice to both the parties. He further says that it is preferable to select the arbiters from among the relatives of the couple because they are expected to know the causes of the dispute better and both the parties can talk to them freely and repose confidence in them.

The jurists differ on the question whether arbitration is obligatory or only desirable. The most eminent among them are of the view that it is the job of the government to appoint the

arbiters. Shaheed Thani in his book, 'Masalik' has formally expressed the legal opinion that arbitration is obligatory and it is to be arranged by the government.

Sayyid Muhammad Rashid Riza, the author of the Qur'anic Commentary, 'Al-Manar', after giving the opinion that arbitration is obligatory, refers to the difference of opinion among the jurists on this question and says that, practically, the Muslims do not follow this wise rule and thus are deprived of its unlimited benefits. The scholars unnecessarily waste their energy on arguing whether arbitration is obligatory or only desirable, while nobody takes steps to implement it. If a rule is not to be implemented, then what difference does it make whether it is obligatory or desirable?

Regarding the conditions which the arbiters can impose on the husband to secure a reconciliation, Shaheed Thani says that they can for example bind him to keep his wife in a particular town or a particular house; not to accommodate his mother or his other wife in the same house not even in a separate room; to make prompt cash payment of the dower fixed at the time of marriage; or to make immediate payment of any loan he might have taken from his wife.

In short, any suitable action to dissuade the husband from repudiating the marriage bond is valid and desirable.

This is the answer to the question we raised earlier i.e. whether or not, the judiciary which represents society has the right to intervene and prevent the dissolution of marriage.

The judiciary can intervene because the husband's decision to divorce his wife is not, in all cases, a sign of the final collapse of the conjugal bond. Such a decision may be taken in a fit of rage or may be the result of some misunderstanding. Any action taken by the society to prevent the implementation of such a decision is welcomed by Islam.

A court of arbitration, being the representative of the society, can direct the divorce offices not to finalise the action on a divorce case, till the court intimates them of its failure in bringing about peace and harmony between the husband and the wife.

THE WIFE'S PREVIOUS SERVICE TO THE HOUSEHOLD

The unchivalrous divorce, besides dissolving the sacred family life, creates such other positive problems for the wife that they cannot be ignored. Suppose a woman lives in the house of her husband for years, takes his house to be her own and most sincerely works hard to build it up and give it a shape. She, as is the case with most of the women with the exception of those belonging to the modern urban society, cuts down the expenses on food

and clothing, sometimes even to the annoyance of her husband, and hesitates to engage a servant to help her in the household work. She sacrifices her youth, energy and health for the sake of her husband and her household. Now, if the husband of such a woman, after years of a joint life, wants to divorce her to marry another woman, he not only wants to bring to nought all the efforts and aspirations of his wife, but also wants to indulge in sexual pleasure at her expense.

This is not simply a case of the dissolution of mental life, and hence, it cannot be said that it is below the natural position and dignity of woman to thrust herself on a man who does not want her.

Here other questions are also involved the question of becoming homeless for the wife, the question of handing over one's house to a rival and the question of the wastage of all her efforts and services in the past.

Every human being wants a home of his or her own and feels attached to the home built by his or her own hands. If you try to turn a bird out of the nest it has built, it will certainly resist and defend itself.

In our opinion, the problem is fully worth considering. In such cases, divorce not only means the dissolution of marriage, but also brings women to complete ruin.

Anyhow, the question of home is distinct from that of divorce, and the two questions should be considered separately. From the Islamic point of view, normally this problem should not arise. It arises owing to the ignorance of Islamic rules and regulations and the exploitation of women's goodwill and faithfulness, by men.

Most of the people suppose that all the fruits of woman's labour belong to her husband. They even think that the husband can force his wife to work for him and she has to obey all his orders like a slave. This wrong notion is the root-cause of all the trouble. As we have repeatedly pointed out, woman has full freedom as regards her work and activity. Whatever she earns belongs exclusively to her. Islam has given her economic independence. In addition, it has made the husband responsible to bear the expenses of his wife and children. Thus, Islam has provided woman enough opportunities, from the financial point of view, to lead a respectable life independent of man. Divorce and separation should not cause her any anxiety in this respect. All the things which she might have collected to build up her home belong to her and her husband has no right to seize them. Such apprehensions are justified only in the systems, which force woman to work in the house of her husband and regard the fruits of her labour as belonging to him. The misgivings which exist among our people are probably due to their own ignorance of the law.

Another cause of the trouble is the exploitation of the faithfulness of woman by man. Some

women make sacrifices, not because they are unaware of the law of Islam, but because they are over confident of the sincerity of their husbands. They want that there should be no question of 'my money and your money'. They do not care to take advantage of the opportunity given to them by. Islam. They are suddenly disillusioned and find that they have wasted their lives in making sacrifices for an unfaithful man and have lost the opportunity given to them by their religion.

If a wife is expected to give up her legal right of keeping a separate account of her money and her earnings, the husband is also expected that, in consideration of her sacrifice and the service rendered by her, he should make presents to her and offer her gifts. The Qur'an says: *"When you are greeted with a greeting, greet with one better than it or at least as kind"*

(Surah an Nisa, 4:86). It has always been customary among the good people to present the wife with valuable articles, like a house or other property, as a gift.

Anyhow, what we mean is that the problem of becoming homeless is not related to divorce and that it cannot be rectified by changing the concerned law. This problem is related to the question of economic independence of woman and that question has already been solved by Islam. This problem has arisen because of the ignorance of some women, and the simplicity of others, and will automatically be solved if women know the teachings of Islam on this point and do not show too much simplicity while dealing with their husbands.

DIVORCE (V)

We have said earlier that there are two aspects of divorce which cause all the hardships. One of them is that there are cases of divorce, which are due to the unfaithfulness, and unchivalrous attitude of some husbands. The other aspect is that, even when there is no chance of harmony between a husband and a wife, some husbands withhold divorce, not with a view to living with the wife but with a view to harassing her.

We have mentioned before that Islam welcomes every means of preventing unchivalrous divorce and has taken its own measures to eliminate it as far as possible. Anyhow, Islam is opposed to the application of force for the purpose of maintaining conjugal relations.

Islam regards the family as a living unit, and endeavours to keep it alive. But if it dies, Islam's verdict is that it should be buried. Islam does not like it to be mummified and kept active artificially.

We have learnt that the reason why man has the right of divorce is that the conjugal bond is based on a natural relationship which has its own natural rules. Nature has put the key of its

consolidation or destruction into the hands of man. The husband and the wife, each has, by nature, a specific position, which cannot be changed, nor can their positions be unified. This specific position gives rise to certain rights and obligations, the right of divorce being one of them. In other words this right is due to the special and specific role which man and woman, each plays in seeking a partner in life.

RIGHT OF DIVORCE IS DUE TO MAN'S SPECIAL ROLE AND NOT TO ANY PROPRIETARY RIGHTS

Now you can easily assess the value of the propaganda which is carried out by anti-Islamic elements. They allege that Islam has given the right of divorce to man, because it does not recognise woman to have free will, or to possess any desires or aspirations. They say that Islam includes woman in the category of non-living objects, and not in that of living people. That is why it has given man proprietorial rights over woman. Naturally such rights include the right of emancipation.

We have shown that the Islamic family law is not based on the masterhood of man and the serfdom of woman. Islam's philosophy is more subtle and far higher than the intellectual level of these writers. Through divine inspiration Islam has grasped the very essence of the basis and structure of the family system. Science is now unravelling some of the mysteries solved by Islam 14 centuries ago.

DIVORCE IS RELEASE IN A SENSE

The anti-Islamic elements say that divorce should definitely have a judicial form and not that of a release or relief. The fact is that divorce has an aspect of release, because marriage has an aspect of appropriation. It is not possible to change the law of mate-seeking, according to which male and female have separate roles, and the natural state of marriage apparently resembles appropriation. As far as sexual relations are concerned, nature has prescribed distinct roles to a male and a female, both in the case of human beings and animals. Divorce could have been deprived of its aspect of release only if it had been possible to change the law of nature.

A critic says that generally the Shiah jurists describe the marriage contract as a binding contract, but it appears that according to Islamic law it is binding only in the case of the wife, for the husband can annul it at his will and pleasure. He adds that it is disgraceful to give the husband the right of divorce during this age of the atom, artificial moons and democracy.

It appears that this gentleman and others, who think on similar lines, do not differentiate between annulment of a marriage and divorce. When it is said that the contract of marriage is a binding contract, it means that neither the husband nor the wife has the right to annul it. If a marriage is annulled (as it happens in certain exceptional cases) it is treated as if it was never contracted and no legal effects flow from it. The woman cannot claim her dower. The man has no responsibility to support her during the period of probation. On the other hand, in the case of divorce, the marriage bond is dissolved, but its legal effects are not totally nullified. For instance, if a man divorces his wife after even one day's conjugal life, he has to pay the full dower and has to maintain her during the period of probation. In case he divorces after contracting the marriage, but before its consummation, he will have to pay half the dower. As in this case woman has no period of probation and the question of maintenance does not, therefore, arise. Thus, it is clear that divorce does not nullify all the legal effects of a marriage contract. It is also clear that divorce is different from the annulment of a marriage and that the right of divorce is not contradictory to the fact that a marriage contract is binding. There are two aspects specified in Islam annulment of marriage and divorce. A marriage may be annulled owing to a serious physical defect being discovered in either husband or wife. In this regard, both of them have equal rights. Only the right of divorce belongs exclusively to man.

The fact that there are separate rules for divorce and the annulment of marriage shows that Islam has not accorded the right of divorce to man because it wanted to give him any preferential treatment.

PENALTY FOR DIVORCE

With a view to preventing divorce, certain legal systems prescribed a penalty. We do not know whether any such law still exists anywhere in the world. Anyhow, the historians say that the Christian Emperors of Rome imposed a fine on those who divorced their wives without any valid reason.

Obviously it is another form of the use of force for the maintenance of family life, and hence cannot be of much avail.

DELEGATION OF THE RIGHT OF DIVORCE TO WIFE

We have so far dealt with the natural right of divorce which belongs exclusively to the husband. But he can confer the power of divorce on the wife. This delegation of power can either be general or limited to certain specified circumstances. To make it irrevocable it is

included in the marriage contract as a binding clause, according to which the wife is empowered to dissolve the marriage in the specified circumstances already agreed upon.

It has been customary since the olden days that the women, who feel, in any way, apprehensive of the conduct of their husbands, insist on the inclusion of such a clause in the marriage contract and exercise the power delegated to them, if necessary.

Thus, according to the Islamic law, though woman does not have the natural right of divorce, she can have the contractual right of the dissolution of marriage.

Hence, it is not correct to say that the right of divorce is unilateral and Islam has given it only to man.

JUDICIAL DIVORCE

Judicial divorce means the dissolution of marriage by a judge and not by the husband. In a large number of countries only a court is competent to effect divorce and to dissolve marriage. According to this system, every divorce is a judicial divorce. We have already made it clear that, in view of the spirit of marriage, the aim of the formation of a family and the position held by woman in the family, a divorce, which runs its normal course, cannot depend upon the decision of a judge.

Now we would like to see whether, from the Islamic point of view, a judge has no power to effect a divorce or there are any circumstances, howsoever exceptional, in which he can do so.

Divorce is the natural right of the husband, provided his relation with his wife run their normal course. Normally, if he wants to live with her, he should look after her, discharge all the rights belonging to her and treat her kindly. If he finds it impossible to live with her smoothly, he should pay up all her dues and part with her. Besides her dues, he is also required to pay her an additional sum as a token of goodwill and gratitude. The Holy Qur'an says: *"Provide for them, the rich according to his means, and the strained according to his means, a fair provision',* (Surah al-Baqarah, 2 : 236)

But there may be cases when the conjugal life does not run its normal course. There may be a man who neither wants to live happily with his wife nor would he agree to divorce her.

Natural divorce may be compared to a natural child-birth, which automatically takes its normal course. But the divorce by a man, who is not willing to discharge his duty and does not agree to divorce, of his own accord, is comparable to an abnormal delivery which requires

a caesarean operation by a surgeon.

ARE CERTAIN CASES OF MARRIAGE INCURABLE LIKE CANCER?

In such cases divorce does not depend on the will and pleasure of the husband. If such a man is not willing to divorce, the woman cannot be allowed to endure the agony without having a remedy. Islam does not play the role of a silent spectator in such cases.

Many people are under the false impression that from the Islamic point of view, such a situation is incurable. They think that it is a sort of cancer which afflicts some unfortunate people, but cannot be cured and so the woman has no alternative but to continue to suffer patiently till she dies.

In our view this mode of thinking is repugnant to the principles of Islam. Islam is a religion which always upholds justice. The establishment of a just society has been the basic aim of all the Prophets. The Holy Qur'an says: *Certainly we sent Our Messengers with clear proofs and sent down with them the Book and the Balance, so that humankind may conduct itself with equity*. (Surah al-Hadid, 57:25) Islam cannot tolerate such a flagrant injustice, nor can it be imagined that it would formulate a law which may cause a malady comparable to cancer.

It is regrettable that some people, who admit that Islam is a religion of justice, still hold such a view. If one 'black law' can be attributed to Islam and accepted as a cancer, there can be no valid objection to regarding some other 'cruel' laws as tetanus, tuberculosis, paralysis etc.

Such an allegation is against the principle of justice, which is a cardinal principle of Islamic law.

Further, if it is possible to remove the cancer by a simple operation, will it not be wise to take prompt action and relieve the patient of his disease?

Take the case of a woman who joins a man in all earnestness as his partner in life, but subsequently the man ceases to take interest in her. If the man misuses his powers, does not divorce her and keeps her, in the words of the Qur'an, 'hanging', not because he wants her to live with him as his wife, but just to prevent her from seeking another suitable husband, such a woman is really afflicted with a cancer. But this cancer is easily operable, and after one operation the patient is expected to recover fully. This operation can be performed by a qualified judge only.

As stated earlier, it is a big problem of our society that some callous husbands refuse to divorce, and thus perpetrate a grave injustice. They use religion as a pretext to justify their highly objectionable conduct. When they say that woman should bear patiently their high-handedness as an incurable cancer, they certainly bring a bad name to Islam.

Though the subject is rather technical, yet we propose to discuss it briefly, to remove the doubts of the evil-minded persons and to elucidate the teachings of Islam in this respect.

DEADLOCKS

Some deadlocks are not peculiar to the questions of marriage and divorce. They appear in other spheres also, such as those related to the financial problems. Let us first see how Islam has dealt with the deadlocks in these areas. Has it removed them or accepted them as an irremediable phenomenon?

Suppose two people, through inheritance or some other way, come to own an indivisible article such as a diamond, a ring, a vehicle or a painting and they are not willing to use it jointly or by turns. Neither of them is also ready to sell his share to the other partner. They also do not agree on any other formula for its use. The article is being wasted, because obviously neither of them can use it without the consent of the other. What is to be done in such a case? Should the problem be left unsolved and the article be allowed to remain un-utilised? Has Islam found a way out of such an impasse?

The fact is that Islamic law does not regard such questions as insoluble. It does not admit that the right of ownership can lead to the non-utilisation of any property. It allows the courts of law to intervene in such cases and put things right. Even if the parties concerned do not want to submit the matter for adjudication, the court can still order the article in question to be let out or sold. The hire charges or the sale price will, of course, be divided between the owners, but the court can take action with or without their consent.

In such cases the right of ownership is not taken into consideration because of the involvement of another principle, namely, the. prevention of wastage. The right of ownership is to be waived in such cases, because it is to be respected only so far as it does not lead to the total loss and sheer wastage of the property.

Suppose two persons own a diamond, a sword, or something else of that sort. Neither of them is willing to sell his share to the other, but both of them agree to divide it into two pieces so that each of them may take one-half of it. Obviously a diamond, a sword or a car, when divided into pieces, becomes useless and loses its value. Islam does not allow such wastage.

A great jurist, Allamah Hilli, says that the legal authorities should not allow anyone to resort to such an action. The fact that an agreement exists between the owners of the article concerned will not do in such cases.

DILEMMA OF DIVORCE

Now let us see what is to be done about the question of divorce. If a husband is uncompromising and does not discharge all or some of his financial (maintenance), moral (good-fellowship) and sexual (right of co-habitation and intercourse) duties and obligations, enjoined upon him by Islam, and at the same time, is not willing to divorce his wife, what action is to be taken? Does there exist sufficient cause to allow the judicial authority to intervene?

VIEW OF AYATULLAH HILLI

A great jurist of recent times, Ayatullah (Shaykh Husayn) Hilli of Najaf (Iraq) has dealt with this point in his treatise, 'Conjugal Rights'. Here is the summary of his views:

Marriage is a sacred contract and at the same time a sort of partnership between two persons who make certain commitments to each other, the execution of which ensures their happiness. That is not all. In fact, the felicity of the whole society depends upon the success of their relations.

The main rights of the wife consist of maintenance, cohabitation and good fellowship.

If the husband avoids carrying out his commitments and also abstains from divorcing his wife what should a woman do and how should she behave towards her husband? There are two possible alternatives. Either a Muslim judicial authority should intervene and pronounce the divorce ex parte, or the wife should also refuse to carry out her commitments.

The first alternative is supported by the following verses of the Holy Qur'an: *Divorce may be pronounced twice: then either a woman must be retained in good fellowship or released in kindness.* (Surah al-Baqarah, 2 : 229). In other words, the right of divorce and its revocation can be exercised twice only. Thereafter, there are only two alternatives, either magnanimous retention or release in kindness.

Again in the Surah al-Baqarah, (2 : 232) the Qur'an says:

When you have divorced your wives, and they have reached their prescribed term, either retain them with honour or release them in kindness; Do not retain them by force to harm them. Whoever does that wrongs himself

From these verses, a general rule can be deduced. A husband has either to retain his wife and carry out all his duties and obligations magnanimously, or to release her and sever the conjugal bond. From the Islamic point of view there is no third alternative. The words, "do not retain them by force to harm them" deny the third alternative of neither divorcing the woman nor retaining her justly or magnanimously. These words, in a more general sense, include the cases of both doing harm to the woman intentionally and simply ignoring her rights and interests by not divorcing her.

These verses expressly refer to the question of the revocation of divorce and lay down that the revocation should be on a solid basis, with a view to keeping the woman as a partner in life and not with a view to doing harm to her. But, in their scope, the verses are not limited to this question only. They lay down a general rule applicable to the rights of wife at all times and in all circumstances. As a general rule, the husband has to choose one of the above two alternatives throughout his married life. There exists no third alternative for him.

Some jurists have wrongly limited the scope of these verses. They are of the view that they are applicable only to those husbands who want to revoke their divorce during the period of probation (iddah). In fact, this view is not correct. Apart from the context of these verses, the Holy Imams, as authority, have quoted them in other cases also. For instance, Imam Baqir (P) has said that a husband who swears that he has nothing to do with his wife and in pursuance of such an oath (ila') abstains from her society, has only two alternatives at the expiry of a period of four months. Either he should break his oath and make atonement (kaffarah) for his improper behaviour, or he must immediately divorce his wife, for Allah says: Either retain her (the woman) in good fellowship or release her in kindness. (Surah al-Baqarah 2 : 229)

On another occasion, when a man had appointed an agent to contract a marriage and fix the dower on his behalf, and later the principle denied the delegation of such powers, Imam Sadiq (P) said that the woman could choose another husband for herself. When the man knew in his heart that he had appointed an agent and delegated him the power to contract a marriage, but later denied it, then he must pronounce divorce, so that his conscience might be cleared, for Allah has said: "Either retain a woman in good fellowship or release her in kindness". These instances show that the Imams believed the verse to constitute a general principle.

In case a husband neither carries out his conjugal obligations nor does he divorce his wife the religious court should summon him and call upon him to pronounce divorce. If he declines, the court itself can declare the marriage to be dissolved. According to a tradition, Abu Basir has reported that Imam Sadiq (P) said: "If a husband does not maintain his wife, it is the duty of the court to dissolve their marriage, by enforcing a divorce." This in a nutshell is the view

of a jurist of the first rank of the present age. He who wants to know its details should consult the book Huquq-uz-Zawjiyyah" which consists of the lessons of the grand author.

As you must have observed, the verse, *'Either retain in good fellowship or release in kindness'* constitutes a principle, within the framework of which Islam has prescribed the rights of the wife. According to this principle and the strict order contained in the sentence: *'Retain them not for injury*, 'Islam does not allow any wicked man to misuse his powers and to keep any woman in straits to prevent her from marrying any other person.

Besides the above arguments quoted from the treatise, 'Conjugal Rights', there exist other arguments also, which support the view that the verse, *'Either retain in good fellowship or release in kindness'* is from the Islamic point of view, a general rule which covers all the rights of the wife. The more one looks at the various aspects of this rule, the more he realises the soundness of the teachings of Islam.

In al-Kafi, Vol. V, Imam Sadiq (P), is reported to have said that when a man wants to marry a woman, he should say:

"I acknowledge the pledge taken by Allah 'Either retain in good fellowship or release in kindness'."

The Holy Qur'an says: *How can you take it (the dower) back, when you have intimated with each other, and they (wives) have taken from you a strong pledge (of making a full payment of dower to them).* (Surah an-Nisa, 4:21) The commentators of the Holy Qur'an, both the Shiah and the Sunni, admit that here a 'strong pledge' denotes the verse, *'Either retain in good fellowship or release in kindness.'* This *is* the pledge to which Imam Sadiq (P) referred, when he called on the people to acknowledge the pledge of Allah at the time of marriage.

Both the Shiah and the Sunni sources report that on the occasion of the Farewell Pilgrimage (his last pilgrimage) the Holy Prophet said: "Fear Allah in respect of women, for you hold them in trust for Allah, and you have been allowed to enjoy them by His word."

The well- known historian - theologian, Ibn al-Athir, writes that the 'word of Allah' in this saying of the Prophet refers to the Qur'anic verse - *"Either retain them in good fellowship or release them in kindness."*

VIEW OF SHAYKH TUSI

Shaykh Tusi, expressing his views regarding the cases of impotence, says that after it is proved that the husband is sexually impotent, the wife has the option of dissolving the

marriage. He says that all the jurists are unanimous on this point and in support of their view they cite the verse: *Retain in good fellowship or release in kindness.* An impotent man, being unable to perform his conjugal duties, cannot keep his wife in good fellowship and should, therefore, release her.

The views quoted above, on the whole, prove that Islam does not allow any man to misuse his right of divorce and keep his wife as a prisoner. Anyhow, it should be noted that every judge is not competent to intervene in such matters. Islam has laid down very hard and fast qualifications for a judge *(Qazi).*

It is worth noting that the cases of judicial divorce should be exceptionally rare, because Islam is anxious to preserve the family life as far as practicable. Islam cannot allow the divorce to take the form that it has taken in Europe and America, the instances of which we daily read in the newspapers. For example, a woman demanded a divorce because her husband did not like the film she liked. Another woman wanted a divorce on the plea that her husband did not kiss her beloved dog. Many other similarly ridiculous and flimsy pleas are advanced daily. They only reflect the decline of humanity.

In a preceding chapter we mentioned, in the following order, five theories regarding divorce:

(1) There should be no moral or social restrictions on divorce;

(2) Marriage constitutes an eternal bond. Divorce should be totally banned; (View of the Catholic Church)

(3) Marriage is dissolvable by man and not by woman;

(4) Marriage is dissolvable both by man and woman but with certain conditions. The procedure of its dissolution is the same for both of them; (View of the supporters of equality of rights).

(5) The way to divorce is open for both man and woman, but their way out is separate.

As we said in the above mentioned chapter, Islam supports the last theory. From what we have said about the possibility of the delegation of the power of divorce to the wife, as an integral condition of the marriage contract and the possibility of judicial divorce, it is evident that though Islam does not recognise that woman has any natural right of divorce, yet it has not completely slammed the door of exit to her.

The question of judicial divorce can be discussed further, especially with reference to the views of the jurists of various schools of law, but we think that for our present purpose we need not go into further details.

Fixed-Time Marriage

FIXED-TIME MARRIAGE I

One of the glorious laws of Islam, from the point of view of the Ja'fari (Shi'ite) law, is that there are two kinds of marriage, a permanent and a fixed-time marriage.

Some of the effects, which flow from these two kinds of marriage, are the same and some others are different. There are two distinctive features between them. One is that in a fixed - time marriage, a man and a woman enter into a contract to marry each other for a fixed period, on the expiry of which, if they wish, they can extend it, otherwise they separate.

The other distinguishing feature is that there is a greater freedom of choice in fixed-time marriage. The contracting parties may stipulate any conditions they like. For example, in a permanent marriage the husband is bound to maintain his wife and meet her daily expenses. Besides, he has to provide for her clothing, housing and other necessities of life like medicines and medical treatment etc. But in a fixed-time marriage everything depends on the terms of the contract. It is possible that the husband may not be able or may not be willing to bear the expenses of his wife, or the wife may not like to utilise her husband's money.

In the permanent marriage the wife has to accept her husband as the head of the family and obey him within the limits of family interest, but in a fixed-time marriage this also depends on the terms of the contract. In the case of a permanent marriage wife and husband inherit from each other, but this is not so in a fixed-time marriage.

However, in the fixed-time marriage after the formula has been pronounced the couple is recognised as lawful wife and husband and they can then have intimacy but before that they are strangers and it is prohibited for them to have any kind of sexual relation.

The main difference between a fixed-time and a permanent marriage is that a fixed-time marriage places less restrictions upon the spouses. Its terms depend upon their will and choice and the agreement concluded between them. Its very nature gives a sort of freedom to both the parties, for it puts the fixation of its duration into their own hands.

In a permanent marriage neither the husband nor the wife can use any contraceptive methods without the consent of the other, but in the fixed-time marriage such a consent is not

necessary. This is, in fact, another kind of freedom given to both the husband and the wife.

The child born from a fixed-time wedlock is in no way legally different from the child born as a result of a permanent marriage.

Dower *(mahr):* The marriage portion given by the husband to his wife. The dower must be specified and fixed at the time of marriage, but its actual payment may be deferred with the mutual consent of the parties concerned.

'Dower' is necessary, both in the case of a permanent and a fixed-time marriage, with the only difference that the non-specification of dower at the time of marriage makes the fixed-time marriage void (batil), but does not affect the validity of permanent marriage. If no dower is specified at the time of permanent marriage, then the wife is entitled to the dower, customarily fixed for the females.

In a permanent marriage, the husband is debarred from ever marrying the mother or daughter of the wife and the wife is permanently debarred from marrying the father or son of the husband. Similar is the case with regard to fixed time marriage As it is forbidden to propose to a permanently married woman, similarly, it is not allowed to give an offer of marriage to a woman who is married under fixed-time marriage rules. As adultery with the permanent wife of someone else permanently debars a person from marrying her, the same restriction is imposed in the case of adultery with the fixed-time wife of someone else.

After getting a divorce, just as the permanent wife has to pass through a period of probation *(iddah),* during which she cannot marry again, the fixed-time wife also, after the expiry of the marriage term or the termination of marriage earlier with mutual agreement, has to pass a period of probation. The only difference is that in the case of a permanent wife the *iddah* is three monthly periods, whereas in the case of a fixed-time wife it is two periods or 45 days. To have two sisters as wives at the same time is prohibited both in the case of a permanent as well a fixed-time marriage. This is what is meant by a fixed-time marriage, according to the Shi'ite law.

Obviously we support this law with the prescribed conditions and specifications. If some people misused it in the past or are still misusing it, that has nothing to do with the legal system as such. The abolition of this law, as suggested by some modernists, can serve no useful purpose, as, with its abolition, malpractices will not stop, but will only take a different shape. Moreover, the abolition of this law will give rise to many other evils. What is required is that, instead of finding fault with the law, people should be reformed and correctly educated.

Now let us see why it is necessary to have the institution of a fixed-time marriage side by side with that of a permanent marriage. If a fixed-time marriage is necessary, is it compatible with

the present day conditions and modern-ideas of human values? We propose to discuss this question under two headings:

(a) Present day life and a fixed-time marriage

(b) Faults and evils of a fixed-time marriage

PRESENT DAY LIFE AND THE FIXED-TIME MARRIAGE

As we learnt previously, a permanent marriage imposes heavy responsibilities and obligations both on husband and wife.

However, no boy or girl at the time of puberty, when he or she comes under the heavy pressure of the instinctive urge, is prepared for a permanent marriage. The requirements of the modern age have lengthened the interval between natural puberty and social maturity, when one is capable of building a family. In ancient times, when life was simple, a boy could, from his age of early puberty, undertake a job which he continued to practise till the last days of his life. But nowadays that is no longer possible. A boy completes various stages of his education at the age of 25, provided he does not fail at any stage. Only then he can expect to have some independent income. He takes another three or four years before he can gather the wherewithal to settle in life and get married. The same is the case with a girl who is desirous of receiving a better education in life.

TEENAGERS AND SEXUAL CRISIS

Nowadays, if you ask a 17-year-old boy, whose sexual urge is at its height, to marry, the people will laugh at you. The same is true of a 16 years old girl student. At this age, both the boys and the girls are unable to shoulder the burden of a permanent marriage and to accept the heavy responsibilities which ensue from it, not only in the capacity of husband and wife but also in respect of the future children.

WHICH ONE; TEMPORARY MONASTICISM SEXUAL COMMUNISM OR A FIXED-TIME MARRIAGE?

We know what nature is, but the conditions of life in the present world do not allow us to marry at the age of 16 or 17. Nature is not prepared to delay puberty or the sexual urge till we complete our education. Are our young men prepared to pass a period of temporary monasticism and live a life of renunciation and extreme austerity, till they become eligible for a permanent marriage? Even if a young man is willing to accept the life of temporary hermitage, is nature prepared to excuse him from the tensions and nervous disorders which usually result from abstaining from normal sexual activity, as has been disclosed by modern

psycho-analysis?

Now only two alternatives are left. The first is to let a young boy enjoy hundreds of girls, and a young girl to have illicit relations with many boys, and then undergo several abortions. That means that we practically accept sexual communism. Certainly, if we show permissiveness to boys and girls on an equal footing, we do satisfy the Declaration of Human Rights, because in the opinion of many short-sighted people, the spirit of the Declaration requires that, if men and women have to go to Hell, they should go together, arm in arm.

But the question is whether it will ever be possible for these boys and girls, who have had unlimited affairs during the period of their studies, to lead a normal domestic life.

The second alternative is a free fixed-time marriage. In the first instance a fixed-time marriage restricts woman to have only one husband at one time. It is obvious that a limitation of woman means a limitation of man also, whether he likes it or not. If every woman is limited to a single man, naturally every man will be limited to a single woman, except, in case the number of either sex is far greater than the other. Thus boys and girls can pass through their period of studies without facing the ill effects of temporary hermitage, or of falling into the abyss of sexual communism.

TRIAL MARRIAGE

In principle it is possible for man and woman, who intend to marry on permanent basis but could not achieve full confidence in each other, to get married on trial for a temporary period. If they have developed sufficient trust they continue their marital position, otherwise they separate from each other. (Hence the difference between the Western style of relationship with the fair sex and Islam is that with the Westerners there is no conception of marriage code between the couples while in Islam in fixed-time marriage the couple is considered to be husband and wife even for a temporary period).

RUSSELL'S THEORY OF TEMPORARY MARRAIGE

In his book, Matrimony and Morals, the well-known English philosopher, Bertrand Russell, says that prostitutes protect the chastity of our wives and daughters. When this view was expressed by Luckey in the middle of the Victorian age, the moralists were greatly offended, though they themselves did not know why. Anyhow, they were unable to refute Luckey's arguments. The logic of the moralists was that, if the people had followed their teachings, the prostitutes would no longer have existed. But they knew well that nobody paid attention to what they said.

This is the European formula to deal with the danger posed by men and women who are unable to contract a permanent marriage and the one mentioned above was the formula put forward by Islam. If the European formula is adhered to and this social duty is allocated to a section of unfortunate women, will that be in conformity with the human dignity and self-respect of women and the spirit of the Universal Declaration of Human Rights?

Bertrand Russell, in his book, has included a chapter on trial marriage also. He says that Lindsay, who was for many years a judge in Denver, and in this capacity had an ample opportunity to observe the facts of life, proposed that there should be arrangements, for a "companionship marriage." Unfortunately this judge had to lose his post, because he was interested in the welfare of the youth rather than in creating a sense of sin in them. To secure his dismissal, no stone was left unturned by the Catholics and the anti-Negro, Ku Klux Klan.

A companionship marriage had been proposed by a conservative intellectual, with a view to introducing a factor of stability in sexual relations. Lindsay noticed that the main problem of marriage was lack of money. Money is not only required for possible future children, but it is also required because it does not behove a woman to be responsible for the maintenance of the family. He reaches the conclusion that the young men should embark on a companionship marriage, which is different from an ordinary marriage in three ways. Firstly, the aim of this marriage is not to beget children. Secondly, as long as the young woman has not given birth to a child, divorce with the mutual consent of the parties concerned is a simple matter. Thirdly, in the case of divorce, the woman will be entitled to alimony. There is no doubt that Lindsay's proposals are practical and effective and, if they had been accepted by law, they could be expected to have a good impact on morals.

What Lindsay and Russell call a companionship marriage is a little different from the Islamic fixed-time marriage, but this suggestion indicates that thinkers of their calibre have realised that a normal permanent marriage does not meet all the needs of the society.

(II) FIXED-TIME MARRIAGE

We have already described the characteristics of a fixed -time marriage, the necessity of its existence and the inadequacy of a permanent marriage to meet all human requirements. Now we propose to study the so-called other side of the picture and see what the disadvantages and drawbacks of a fixed-time marriage are. Before discussing that let us point out one thing.

HISTORY OF BELIEFS

Out of all the subjects on which views have been expressed, none is so complex and ambiguous as the history of human ideas, beliefs, customs and usages. That is why, though the subject has been most popular, most of the views expressed in connection with it have

been absurd. Anybody who has some knowledge of such subjects as philosophy, gnostics, mysticism and Islamic scholasticism and reads some of the present day writings in our country on the questions connected with these subjects which are borrowed from the foreigners or are exact reproduction of their words, can very well understand what I mean. Our present day writers mostly reproduce or, at least, take their cue from the orientalists, while it appears that the latter and their henchmen do anything but go deep into such questions.

For example, the question known in Islamic mysticism as *'wahadat al- Wujud'(Unity* of Being) has been discussed from every conceivable angle, still little attention has been paid to explain what it really is and what conception of it the great exponents of Islamic mysticism, such as Muhyuddin ibn Arabi and Sadrul Muta'llihin Shirazi have had. Recently, certain comments on fixed-time marriage in the Iranian magazine *'Zan-e-Imruz'* or "Woman of Today", have reminded me of the question of *"Wahdat al-Wujud'*

In the course of these comments everything has been said about a fixed-time marriage, but what really constitutes the spirit of this law and was intended by the lawgiver has been left out.

Indifference is shown to this law, because it is a part of the Eastern heritage. Had it been a Western gift the position would have been quite different.

Had this law come from the West, certainly many conferences and seminars would have been held today to advocate that the confinement of marriage to a permanent one does not conform to the conditions of the second half of the 20th century and the present generation is not willing to shoulder all the responsibilities of a permanent marriage. The present generation wants to be free. It wants to lead a free life. It wants a free marriage whose conditions may be chosen personally by the parties concerned.

Now that voices have been raised in Europe in favour of a temporary marriage and such prominent people as Bertrand Russell are preaching it under the name of a 'companionship marriage,' it is visualised that before long a fixed-time marriage will become so popular that in future we shall be forced to launch a campaign to defend a permanent marriage.

OBJECTIONS

The following are said to be the defects and drawbacks of a fixed-time marriage:

(1) The basis of marriage must be permanent. From the beginning of conjugal relations, husband and wife should know that they permanently belong to each other. The idea of a

separation must not enter into their minds. The fixed-time marriage does not constitute a permanent contract between husband and wife.

It is true that the basis of marriage should be permanent. However, this objection can be valid only if we oppose a permanent marriage and wish to replace it by a fixed-time marriage.

If the two parties can afford a permanent marriage, have full confidence in each other and decide permanently to belong to each other, no doubt they should contract a permanent marriage.

The law of fixed-time marriage has been laid down only because a permanent marriage alone cannot meet all the human requirements in all circumstances. The restriction of marriage to a permanent type only has led either to temporary monkery or to sexual communism: Obviously, no boy or girl, to whom facilities for a permanent marriage are available, would like to indulge in a temporary affair.

(2) Iranian women and girls, in spite of being Shiah, have not welcomed the idea of fixed-time marriage. They regard it as a sort of insult to them. Hence, the general opinion among the Shiah has also rejected it.

It may be said in reply that the general aversion to the her womanly expressions and her skilful sexy postures are put on sale. The tickets to the cinema and theatre, which you buy, are in the final analysis, wages of the hired women. Do you realise to what an extent a woman has to stoop to earn money? She has to learn for many years the art of provoking sex under the supervision of experienced specialists. She has to place her body, her soul and her personality at the disposal of moneymaking organisations to attract more and more customers. If you visit cabarets and hotels, you can see what respect woman has gained, how she has to sell her honour and self-respect for paltry sums of money in order to fill the coffers of some capitalists and how she has to put herself at the disposal of the guests.

Hired women are those sales girls of big stores who sacrifice their honour and self-respect to satisfy the greed of their employers.

Hired women are those model girls who appear on T.V. to publicise commercial goods and employ all means to attract the customers to them.

Who does not know that in the West today, woman's beauty, her sexual attraction, her voice, her art, her body, her soul, and above all her personality are used as a humble means to serve the interests of the European and American capitalism?

I wonder why a woman who, of her own accord, marries a man for a fixed period, is regarded as a hired woman, while a woman who, at a wedding or an evening party, in front of

thousands of greedy eyes of men, sings till her throat pains and stages a thousand and one antics, is not regarded as a hired woman.

By allowing a fixed-time marriage, Islam has protected woman from being exploited by man. It has also forbidden her to employ base means to earn her livelihood. Is it Islam which has degraded woman, or the Europe of the second half of the 20th century?

If one day woman becomes fully conscious of the hidden fixed-time marriage among the Shiah women and girls is due to its misuse by the licentious men. It is the duty of the government to prevent its misuse. Secondly, it is unreasonable to expect a fixed-time marriage to be as popular as a permanent marriage, because the former is meant only to satisfy the needs of the parties concerned, if both are or at least one of them is unable or unwilling to contract a permanent marriage.

(3) A fixed-time marriage is below the human dignity of woman. It amounts to the hiring of a human body, and even to the legalised sale of human beings. It is against the self-respect of a woman to put herself at the disposal of any man in exchange for money.

This is the most surprising objection. Firstly a fixed-time marriage, as described above by us, has not the remotest connection with sale or hire. Can it become sale or hire simply because the duration of wedlock is limited? Does it become hire because a dower has to be fixed? We propose to take up the question of dower separately.

Jurists are unanimous that, with regard to the nature of a contract, there is no difference between a permanent and a fixed-time marriage. They are two forms of marriage and their contracts can be constituted only by using a specific formula *(Sighah* relating to marriage). If a contract of a fixed-time marriage is expressed in the form of sale or hire, it is invalid.

Secondly, since when has the practice of hiring human beings been abolished? All the tailors, barbers, cooks, even specialists, all government employees from the Prime Minister to the lowest official and all the factory workers are hired men.

A woman, who, by her own free will, contracts a fixed-time marriage with a particular man is not a hired woman and does not do anything derogatory to her self-respect or human dignity. If you want to see hired and enslaved women and want to know what a hired woman really means, you should go to Europe and America and visit the film companies there. There you will see how the movements of woman's limbs, her gestures, traps which the 20th century men have laid in her way, she will certainly rise in revolt against all this deception and fraud. She will, then, realise that her only sincere protector and real refuge is the Qur'an. Of course, that day is not far off!

(4) After all, a fixed-time marriage legalises polygamy, which is an abominable practice.

Hence a fixed-time marriage is condemnable.

At the end of this very chapter we shall explain for whom the law of temporary marriage has been enacted. As far as polygamy is concerned, we shall discuss it in a subsequent chapter.

(5) As a fixed-time marriage has no permanency, it leaves the future children shelterless. They become nobody's responsibility. They are deprived of a father's protection and a mother's affection.

This is an objection which is much stressed, but, with the explanation we have given, it totally loses its force. We have previously said that one of the differences between a temporary and a permanent marriage is related to procreation.

In a permanent marriage neither of the spouses can evade the responsibility of begetting children, but, in a fixed-time marriage, both the parties are free. The wife, of course, is not allowed to obstruct her husband from enjoying sex, but she can take measures to prevent her own pregnancy. This problem has been fully solved with the development of the modern contraceptives.

Thus, in the case of a fixed-time marriage, if both the husband and wife are inclined, they can beget children, provided they accept the responsibility of rearing them. It is obvious that, from the standpoint of natural affection, there is no difference between the child of a permanent wife and that of a fixed-time one. Should a father or a mother abstain from performing his or her duty, it is the responsibility of the law to compel them in the same way as it intervenes in the case of divorce. If a husband and wife are not inclined to beget children and their aim is only to get sexual satisfaction, they should abstain from producing children.

As we know, the Church regards contraception as unlawful. But, from the Islamic point of view, a husband and wife are at liberty to adopt contraceptive measures. Anyhow, once an embryo is formed, it is not allowed to be removed or destroyed.

This is what the Shi'ah jurists mean when they say that the aim of a permanent marriage is child-bearing and that of a fixed-time marriage is enjoyment and the gratification of a natural urge.

A FIXED-TIME MARRIAGE AND HAREM

One of the subjects, which the West uses as a weapon to vilify the East and about which West has also prepared films and dramas, is the question of the formation of harems. Unfortunately, many instances of it are to be found in history.

The life of certain caliphs and sultans provides a complete model of 'harem' formation, which

is described as an outstanding symbol of the licentiousness of the man of the East.

It is alleged that the legality of a fixed - time marriage is equivalent to the legality of a 'harem' formation, which is a weak point of the East and has brought disgrace to it. Not only that, it is equivalent to the legalisation of licentiousness, every form of which is contrary to morality and causes decline and ruin.

The same thing has been said about polygamy and the legality of polygamy has been interpreted as the legality of a 'harem' formation. We will discuss the question of polygamy separately. At present, we confine our attention to a fixed-time marriage.

This question should be studied from two angles:

(1) What were the social factors which led to a 'harem' formation in the past and whether the law of fixed-time marriage influenced this phenomenon?

(2) Does the law of a fixed-time marriage aim at providing an opportunity of 'harem' formation to the licentious men?

SOCIAL CAUSES OF 'HAREM' FORMATION

There were two factors which brought 'harems' into existence. The first was the piety and chastity of woman. A 'harem' can be formed onlyin an atmosphere where social and moral conditions are such that a woman is not allowed to have sexual relations with more than one man. In such circumstances a licentious man has no alternative but to gather together a number of women and form a 'harem'.

Obviously, in an atmosphere where importance is not attached to chastity and women are available easily and freely, nobody will take the trouble of forming a big 'harem' at a huge cost and with a large paraphernalia.

The second factor was the non-existence of social justice. The atmosphere conducive to 'harem' formation is that in which a few are steeped in all sorts of luxuries and affluence, whereas others are unable to make both ends meet, and in which there are many who are unable to have a wife and form a family. In such an atmosphere the number of unmarried women grows and a suitable ground for a 'harem' formation is furnished.

On the other hand, if social justice is established and the means of forming a family and choosing a spouse are available to all, automatically every eligible woman becomes attached to one particular man and no opportunity is left for debauchery, licentiousness and 'harem' formation.

If every adult is in a position to have a spouse, naturally not enough women are left for rich men to form harems, for the number of women is usually more or less equal to the number of men.

It is customary that history narrates the stories of the 'harems' of the caliphs and the sultans and describes the pomp and show of their courts, but ignores to explain the privation, misery and sufferings of those who died at the foot of their palaces and of those whom the social conditions did not allow to have spouses. Hundreds of women, who passed their lives in the 'harems', were the natural right of a number of deprived men, who were forced to remain unmarried till the end of their lives.

Undoubtedly, in a society where chastity prevails and sexual success is impossible except within the frame-work of marriage, including both, permanent and fixed-time, 'harem' formation is impossible, provided social and economic inequalities are removed and the natural right of matrimony is made available to every adult.

A cursory glance over history shows that the law of fixed-time marriage has not exercised even the slightest influence over 'harem' formation.

None of the Abbasid Caliphs and the Ottoman Sultans, who were famous for keeping large 'harems', was a follower of the Shi'ah theology, and so none of them could be expected to have taken advantage of the law of fixed-time marriage.

The Shi'ah Sultans, though they could use this law as an excuse, never vied in this respect with the Abbasid Caliphs or the Ottoman Sultans. This clearly shows that the harems were the outcome of some other special social factors.

HAS FIXED-TIME MARRIAGE BEEN MADE LAWFUL TO SATISFY LUST?

There are no two opinions about the fact that heavenly religions, on the whole, censure licentiousness and immorality, so much so that the followers of most of them have preferred a life of renunciation and asceticism.

One of the clear and accepted principles of Islam is to combat lewdness, which has been compared to idolatry by the Qur'an. Islam has described a 'taster', i.e. a man who wants to enjoy various types of women, as condemned and hated by Allah. While discussing the question of divorce, we shall quote authoritative Islamic references in this respect.

One of the distinctive features of Islam is that it rejects monkery and renunciation, but does not allow lewdness. According to Islam, all natural desires, including sexual desire, should be

satisfied within natural limits and only to the extent of natural requirements. Islam does not permit fanning the fire of desires and converting them into unquenchable thirst. Islam is against everything that takes the form of licentiousness and injustice.

There is no denying the fact that it has never been the intention of the legislator of the fixed-time marriage law to provide a means of gratification of their excessive carnal desires to sensual people and to bring disaster to a woman and her innocent children. The great encouragement given to the idea of fixed-time marriage by the Holy Imams has a special philosophy, which we shall explain shortly.

HAREMS AND THE MODERN WORLD

Now let us see how the modern world has dealt with the question of 'harems'. The modern world looks at 'harems' with disgust and consequently this custom has been discarded. One of the two factors which brought it into existence has been removed. But which factor? Not that of the social inequality, but it is that of the piety and chastity of woman which has been removed. The lewd man of this century is no longer in need of taking the trouble of forming a 'harem' and of bearing the huge expenses of maintaining it. Thanks to the western culture, that for the man of this century a 'harem' is available everywhere. In order to enjoy women of different races and colours, the modern man finds no necessity of having as much power and money as Harun al-Rashid or Fazl ibn Yahya Barmaki had. For him it is enough to have a car and a monthly income of a few thousands to be able to indulge in so much sex pleasure that Harun al-Rashid could never have dreamt of. The modern hotels, restaurants and cafes are always ready to serve as 'harems' for men. Some time ago a young Iranian, Adil Kutwali, frankly admitted that he had 22 mistresses of various shapes and

features at one and the same time. Thanks to Western culture, that the modern man enjoys all the pleasures of a 'harem' without undergoing the worries and huge expenses of maintaining it.

Should the hero of 'a thousand and one nights' raise his head from the dust and see the vast possibilities of indulgence in sex and the cheapness and abundance of women, he would never think again of forming a 'harem', with all the trouble and expenditure which it involves. He would thank the people of the West for saving him all the trouble of forming a 'harem' and would immediately announce the abolition of polygamy and a fixed-time marriage, because they create obligations for men with regard to women.

If you ask who the loser is in this game, the winner being already known, we would say that unfortunately woman has always been the loser. Being credulous and simple, she was the loser yesterday and she is the loser today.

CALIPH BANS FIXED-TIME MARRIAGE

Fixed-time marriage is an exclusive feature of the Ja'fari law. Other Muslim schools of theology do not allow it. I do not intend to enter into any Shiah-Sunni controversy here. I wish only to refer briefly to the historical background of the question.

All the Muslims are unanimous that during the early period of Islam fixed-time marriage was permissible and the Holy Prophet, during some of the journeys when the Muslims were away from their spouses and were feeling hardships, allowed them to contract fixed-time marriage. It is also agreed by all the Muslims that the second caliph, during the period of his caliphate, banned fixed-time marriage. According to the well-known reports he said: "Today I ban two things, which were allowed during the period of the Prophet. They are fixed-time marriage and performance of *'Hajj'* and *'Urn rah'* with separate '*ihrams'*,

Some Sunnis believe that the Holy Prophet himself had banned fixed-time marriage during the last days of his life and the second caliph simply repeated this ban already placed by the Holy Prophet. But the words of the caliph which have come down to us indicate something contrary to this. The correct explanation of this point is that which has been given by Allamah Kashif al-Ghita. The caliph banned temporary marriage, because he thought that the matter was within his constitutional power as Head of the State, who could use his special powers according to the needs of the time. In other words, the caliph's order was political and not legal. The caliph never concealed his deep concern over the dispersal of the companions of the Prophet in the newly acquired territories and their mixing with the newly converted Muslims. As long as he lived, he vehemently opposed their migration from Medina.

Especially, he did not like their blood to be mixed with that of the newly converted Muslims, whose Islamic training was not deep-rooted yet. Obviously, this was a temporary consideration. The Muslims of those days accepted the caliph's order without showing resentment, only because they knew that it was a political necessity and not a permanent law. Otherwise, it is inconceivable that the people would not have been resentful, when the caliph said that the Prophet had ordered one way and he was ordering the other way. But later, when, as the result of certain developments, the life of the early caliphs, especially the lives of the first two caliphs, came to be regarded as a model, their orders assumed the form of a permanent law. In this case our Sunni brethren are to be blamed more than the caliph who imposed temporary ban on fixed-time marriage for political considerations (just like the prohibition of tobacco in Iran at the beginning of this century). Others should not have given a permanent form to this ban.

It is evident that Allamah Kashif al-Ghita did not express any opinion as to whether the caliph's action was justified or not. He had simply described the nature of the plea on which action was taken in the first instance and the reason why it did not face any adverse reactions of the Muslims.

Anyhow, it was because of the influence and personality of the caliph and the people's bias

towards following his actions and policies that the law of fixed-time marriage fell into oblivion, and an Islamic tradition, which was complementary to permanent marriage, and whose suspension was likely to cause much inconvenience, became obsolete.

It was in these circumstances that, with a view to ensuring that this Islamic tradition might not be completely forgotten, the Imams, who are the defenders of the faith, encouraged it and vehemently pleaded for it. Imam Ja'far Sadiq (P) used to say that fixed-time marriage was a point in respect of which he would never dissimulate.

Besides the intrinsic advantages of fixed-time marriage, an effort to revive a dead tradition was another reason why the Imams preached it. In our opinion, when the Imams forbade men having a wife to contract a fixed-time marriage, they wanted to make it clear that it was not meant for those who were not in need of it.

Imam Kazim (P) said to Ali ibn Yaqtin: "What have you to do with a fixed-time marriage? Allah has spared you the trouble of being in need of it". He said to another man "A fixed-time marriage is allowed to those who do not have a wife. As for those who have a wife, it is allowed only when they do not have access to her."

Guidance and encouragement for general public to take somebody in fixed-time marriage is an important step towards "revival of abandoned custom" or tradition, but encouragement alone to those who stood in need was not adequate enough to enliven this forsaken Prophetic instruction, as is clearly indicated in some Shi'ah scriptures and narrative sources.

Anyway it is a definite fact that the meaning and intention of the first legislator on promotion and explanation of this law and the purpose of the infallible Imams to encourage it on those lines was never to have such provision exist as a means towards sexual adventures, evil desires and build-up of harems for beastly human beings nor to victimise helpless and oppressed women and orphaned children at any time.

The Egyptian writer, Shaykh Muhammad Abu Zuhrah, in his book, *'Al-Ahwa/ aI-Shakhsiyya'* has quoted the Commander of the Faithful Ali (P) as having said: "If it comes to my notice that somebody having a wife has contracted a fixed-time marriage, I will stone him to death".

This tradition has no known chain of authority. Anyhow, if its authenticity is accepted, it supports the view that a fixed-time marriage is permissible only in the case of a man who either has no wife or his wife is away and is not staying with him.

In short why should we stick to that single tradition reported by one of the Sunni ulema (scholars) (while its source remains unknown) and leave aside the numerous traditions of the Commander of the Faithful Ali (P) reported in all Sunni and Shi'ah books in chapters on Mut'ah.

In many of his precious statements Imam Ali (P) the Commander of Faithful says: "If Umar had not taken the initiative to declare fixed-time marriage unlawful no one among the people, excepting a few sex maniacs, would have indulged in adultery". That is, if fixed-time marriage had not been made unlawful, none would have developed freedom to commit adultery. Only those people, who are always inclined to commit unlawful acts, would have indulged in it.

BACK

Polygamy

Monogamy (Practice of being married to only one woman at a time) is the most natural form of matrimony. The spirit of exclusive relationship or individual and private ownership prevails in it, though this ownership is different from that of wealth or property. In this system the husband and wife each regard the feelings, sentiments and the sexual benefits of the other, as exclusively belonging to him or to her.

The opposites of monogamy are polygamy (Custom of having more than one wife at the same time) and sexual communism. The latter, in a sense, may also be regarded as a form of polygamy.

SEXUAL COMMUNISM

Sexual communism means no exclusiveness. According to this theory, no man should exclusively belong to any particular woman, nor should any woman belong to any particular man. It amounts to complete negation of family life. History and the theories related to pre-historical times do not point to any period when man totally lacked family life and when sexual communism prevailed. What is claimed to have existed among certain barbarian tribes was a midway state between exclusive family life and sexual communism. It is said that among certain tribes it was the usual practice that several brothers jointly married several sisters, or several male members of a clan jointly married several women of another clan.

Will Durant in his book, 'History of Culture', Vol 1, writes that at certain places collective marriage was popular in the sense that several male members of a clan jointly married several female members of another clan. For example, it has been customary in Tibet that several brothers have an equal number of sisters as their wives. Nobody knows which sister is the wife of which brother. Every brother cohabits with any of the sisters he likes. A sort of sexual communism exists there. A similar custom existed in ancient England. The custom, which was prevalent among the Jews and some other people of the past and, according to which, after the death of a brother, another brother married his widow, was a remnant of this ancient custom.

PLATO'S VIEW

It appears that, while enunciating his theory of 'philosopher-rulers', Plato has suggested in his book, "The Republic", a sort of family socialism for this class. Several leaders of communism in the 19th century also made a similar suggestion, but, as reported by the author of the book, 'Freud and the Prohibition of Consanguineous Marriage', after some bitter experiences, several of the powerful communist countries officially recognised the law of monogamy in 1938.

POLYANDRY

Another form of polygamy is polyandry, viz. a woman having more than one husband at the same time. According to Will Durant this custom is found among certain tribes of Tibet etc.

Al-Bukhari, in his famous corpus of traditions, as-Sahih, reports Ayesha as having said that among the pre-Islamic Arabs there existed four kinds of conjugal relations. One of them was the proper marriage that is still being practised. In this form a man proposes to a girl through her father and, after the fixation of dower, carries her. There can be no controversy about the father of the children born in such a wedlock. There was another kind of marriage, which was called *'istibza* To procure a better progeny for himself, the husband selected a man and asked his wife to allow him to have access to her for a fixed period. He himself kept aloof till the pregnancy of the woman. It was a marriage within a marriage and was indulged in with a view to improving the breed. According to another custom, a group of men consisting of less than ten people, established a liaison with a particular woman. On becoming pregnant, she called all of them, and, as the custom of the day was, they had to respond to her call. At this time she selected one man as the father of her child out of those who were willing to take that responsibility. The man, after being so chosen, could not decline to accept the fatherhood of the child.

The fourth kind of conjugal relations was known as prostitution. The prostitutes had a flag on the top of their houses. It served as their distinguishing mark. Anybody could have access to these women. If such a woman gave birth to a child, she called all those who had intimacy with her, and with the help of a physiognomist, determined who was the father of the child. The man concerned had to accept the decision of the physiognomist and to own the child.

These were the forms of the conjugal relations which prevailed in pre-Islamic Arabia. The Prophet abolished all of them, except the one which is practised today.

This shows that the custom of polyandry existed among the pre-Islamic Arabs also.

Montesquieu reports that the Arab globe-trotter, Abu Zahir al-Hasan, found this custom in India and China during his visit to these countries in the 9th century and regarded it as a form of debauchery. He also writes: "On the coast of Malabar there lives a tribe called Nair. The male members of this tribe cannot have more than one wife, but the women are allowed to

choose several husbands. Probably the reason is that the Nairs belong to a martial race and their profession is fighting and hunting. Just as we discourage the marriage of the soldiers in Europe so that it may not interfere with their profession of fighting, the Malabar tribes have also decided that, as far as possible, the male members of the Nair tribe should be excused from shouldering family responsibilities. As, owing to the tropical climate of the area, it is not possible to ban marriage totally, it has been decided that several men should have only one wife, so that they may not be heavily burdened with family responsibilities and their professional efficiency may not be affected".

DEFECTS OF POLYANDRY

The main and the basic defect of the system of polyandry is that the paternity of the children practically remains uncertain. In this system, the relations between the child and the father are undetermined and that is the reason why it has not been successful. As sexual communism $_{1}L_{1\sim}$ not been able to take roots anywhere, this system also has not been accepted by any society worthy of the name. As we have said earlier, the family life, the building of a home for the future generation and the definite connection between the past and the future generations are some of the demands of the human instinct. The exceptional cases of the existence of plurality of husbands among certain sections does not prove that the desire of the formation of one's own family is not an instinct of man. Similarly, perpetual celibacy or complete abstinence from conjugal life, as practised by a number of men and women, is also a sort of deviation. Polyandry is not only inconsistent with man's monopolistic nature and his paternal love, but it is opposed to the nature of woman also. Psychological investigations have proved that woman wants monogamy more than man.

POLYGAMY

Another form of polygamy is plurality of wives. It has been more commonly and successfully practised than polyandry and sexual communism. It has not only existed among the barbarian tribes, but has also been practised by many civilised people. Apart from the Arabs, it has been practised by the Jews, the Iranians of the Sasanian period and several other people. Montesquieu says that in Malaya it was permissible to have three wives. He also says that the Roman Emperor, Valentinian II, had, by an edict, allowed the subjects of the Empire to marry several wives, but as this law was not suited to the climate of Europe, it was repealed by other emperors like Theodore etc.

ISLAM AND POLYGAMY

In contrast to polyandry, Islam has not totally abolished polygamy, but has restricted it. On the one hand, it has fixed the maximum number of wives, which one can have, at four, and, on the other, it has stipulated certain conditions and has not allowed everyone to indulge in having several wives. We shall discuss the conditions stipulated by Islam later and will explain why Islam has not banned polygamy.

It is surprising that during the Middle Ages, when anti Islamic propaganda was at its highest, the opponents of Islam used to say that it was the Prophet of Islam who, for the first time, invented the custom of polygamy. They claimed that this custom was the basis of Islam and the rapid spread of Islam among the various people of the world was due to it. At the same time, they claimed that polygamy was the cause of the decline of the people of the East.

Will Durant in his 'History of Culture'. Vol.1, says that the ecclesiastics of the Middle Ages believed that polygamy was an invention of the Prophet of Islam, whereas this is not a fact. As we know, the matrimonial life in most of the primitive societies proceeded according to this system. There are many causes of its emergence. In the primitive societies men were mostly busy in hunting and fighting and the rate of mortality among them was naturally high. As the number of women exceeded the number of men. it became essential to adopt this system. It was not possible to allow some women to remain unmarried, for the rate of mortality being high in the primitive societies, every woman was required to procreate children. There is no doubt that this system suited those societies, not only because of the excess of women over men, but also because it strengthened them numerically. In modern times the most strong and healthy men usually marry late in life and beget only a few children. But in the olden days the strong men could have the best wives and could procreate a large number of children. That is why this practice continued to exist for a very long time, not only among the primitive people but even among the civilised ones. It is only recently that it has gradually begun disappearing from the countries of the East. Agriculture has stabilised the life of men and reduced the hardships and perils of the ancient times, with the result that the number of men and women has almost equalised. Now polygamy, even in primitive societies, has become a privilege of a small wealthy minority and the masses have to be content with only one wife and, as an additional enjoyment, they can only indulge in adultery, whenever possible.

Gustav Leabeon in his book, 'History of Culture', says that no Eastern custom is so infamous in Europe as polygamy, nor has Europe misjudged any other custom to the extent that it has misjudged this. The European writers have believed polygamy to be the basis of Islam and the main cause of its spread. They also hold this custom to be mainly responsible for the decline of the Eastern people. Other objections apart from these, showing sympathy with the women of the East, are raised alleging that these ill-fated women are detained within the four walls of their houses, under the hard-hearted eunuchs. They further say that the slightest action on their part, which may displease the head of the household, renders them liable to be put to death. Such notions have no basis at all. '[he unbiased Europeans should know that it is the

custom of polygamy that has strengthened the family relations and uplifted the moral spirit of those people among whom it is prevalent. It is due to this custom that woman in the East enjoys more respect than she does in Europe. Before proving this point, we must make it clear that this custom is in no way related to Islam. Even prior to Islam, it was practised by all the people of the East, including the Jews, the Iranians, the Arabs etc. The people who embraced Islam in the East did not derive any benefit in this respect. So far, no such mighty religion has appeared in this world as could invent or abolish such a custom as polygamy. It has not been first introduced by any religion. It is the creation of the climatic and the racial characteristics and other causes related to the way of life in the East. Even in the West, where the climate is not congenial to the existence of such a custom, monogamy is a thing which is found in law books only. In actual life there is no trace of it. It is not known how and in what way the lawful polygamy found in the East is inferior to the clandestine polygamy of the people of the West. Apparently, the former is better and more dignified than the latter. The people of the East, when they visit a European country and are confronted with the European criticism of their custom, are naturally bewildered and feel offended.

It is a fact that Islam has not invented polygamy. It has only restricted it. It has prescribed a maximum limit for it. It has laid down strict conditions for it. This custom already existed among most of the people who accepted Islam. They were only compelled to comply with the conditions laid down by Islam.

In his book, 'Iran During the Sassanian Period', Christenson writes: "Polygamy was considered to be the basis of the family. Practically, the number of wives, which a man could have, depended on his means. The poor people apparently could not afford to have more than one wife as a general rule. The head of the family had special rights as such. One of the wives was regarded as the favourite wife and enjoyed full rights. Some other wives were treated as servants only. Legal rights of these two categories widely differed. The slave girls were included among the servant wives. It is not known how many favourite wives a single man could have. But there has been a mention of two favourite wives in the course of several legal discourses. Each of them was called the lady of the house. Apparently they lived in separate houses. The husband was bound to maintain the favourite wife so long as she lived. Every son till he reached the age of puberty, and every daughter till she was married, had the same rights. But only the male children of the servant-wives were admitted to the paternal family".

In the 'Social History of Iran from the fall of the Sassanians to the fall of the Omayyads' the late Sa'id Nafisi writes: "The number of women whom a man could marry was unlimited and at times it is observed in the Greek documents that one man had hundreds of women in his house."

Montesquieu, quoting a Roman historian, says that several Roman philosophers, who were being tortured by the Christians because they refused to embrace Christianity, fled from Rome and took refuge in the court of the Iranian King, Khusro Parviz. They were astonished to see that not only polygamy was legal there, but the Persian men had intimacy with the

wives of others also.

It may be pointed out here that the Roman philosophers took refuge in the court of the Persian king, Anushirwan, and not in the court of Khusro Parviz. Montesquieu has mentioned the name of the latter owing to some misunderstanding.

During the pre-Islamic period, the Arabs could have an unlimited number of wives. It was Islam that prescribed a maximum limit. This naturally created a problem for those who had more than four wives. In exceptional circumstances, some had even ten. They had to part with six of them.

From the above it is evident that polygamy is not an invention of Islam. Islam only restricted it. Anyhow, it did not abolish it totally. In the following chapters we shall discuss the causes which gave rise to this custom and shall explain why Islam did not do away with it. We shall also discuss the reasons which in modern times have impelled both men and women to rise against this custom.

HISTORICAL CAUSES OF POLYGAMY (I)

What are the historical and social causes of polygamy? Why have many nations of the world, especially the Eastern nations, accepted this custom, and why have other nations, such as the Western nations, never practised it? How is it that out of the three forms of polygamy only plurality of wives could gain considerable popularity? Polyandry and sexual communism either have never been practised or have been practised rarely, and only in exceptional cases.

Unless we look into these questions, we cannot discuss the question of polygamy from the point of view of Islam, nor can we study it from the viewpoint of modern human requirements.

If we do not take into consideration the ample social and psychological studies made in this respect, we, too, may, like many superficial writers, harp on the old tune and say that the causes of polygamy are obvious. That is, this custom has come into existence as a result of the high-handedness and the domination of man and the subjugation of woman. It is an outcome of the patriarchal system. As man has dominated woman and has ruled over her, he has given the laws and the customs a turn to his own benefit. That is how he enforced this custom which is beneficial to him and harmful to woman, and has been practising it for centuries. As woman was suppressed, she could not put polyandry into practice. As now the age of the high-handedness of man is over, the privilege of polygamy should, like many other false privileges, make room for equal and reciprocal rights of man and woman.

This way of thinking is very superficial and puerile. Neither the cause of polygamy is the oppression of man nor that of the failure of the polyandry the suppression of woman. If the custom of polyandry has practically come to an end, that is not because the age of man's high-handedness is over. Man has lost no privilege; he has actually gained an advantage over woman.

We do not deny the factor of oppression as one of the factors which give a particular turn to history. We also do not deny that man has, throughout history, misused his domination over woman. But we believe that it is sheer short-sightedness to explain family relations on the basis of the oppression factor only.

If we admit this view, we must also admit that during the period when polyandry was popular among the pre-Islamic Arabs or, as reported by Montesquieu, among the Nairs on the Malabar coast, woman had got an opportunity to dominate over man and impose polyandry over him. It also must be admitted that that period was the golden period of woman. But we know for definite that the pre-Islamic period of Arabia was one of the darkest periods in the life of woman. Earlier we have quoted Montesquieu as saying that the custom of polyandry among the Nairs was not due to the domination or respect of woman, but was the result of the decision of society to keep the soldiers free from the burden of family responsibilities.

Further, if patriarchy is responsible for polygamy, how is it that this system did not gain popularity in the West? After all, the patriarchal system is not confined to the East. Have the people of the West been, from the beginning, pious Christians believing in the quality and reciprocity between man and woman? Has the factor of domination worked to the benefit of man in the East and for the promotion of justice in the West?

Till half a century ago, the Western woman was among the most unlucky of the world. Even her own property was controlled by her husband. The Europeans themselves admit that during the Middle Ages the position of the Eastern woman was far better than that of her counterpart in the West. Gustav Leabeon says that Islam, in its early days, gave the woman exactly that position, which the European woman could get after a very long time; that is, after the chivalry of the Arabs of Andolusia was transmitted to Europe. Courteous behaviour towards woman is the main part of the chivalry which the Europeans learnt from the Muslims. It was Islam, and not the religion of Christ, as is believed by the common people, that enhanced the position of woman. During the Middle Ages the chiefs and barons, though Christians, never held woman in respect. A study of ancient history leaves no doubt that the behaviour of the dukes and barons of Europe towards woman was most barbaric.

Other European authors have also given a more or less similar description of the position of women during the Middle Ages. Though patriarchy prevailed in Europe during that period, polygamy could not become customary.

The fact is that neither polyandry (wherever it was practised) was ever due to the power and domination of woman, nor was its ultimate failure due to her weakness and suppression. Similarly, polygamy in the East is neither due to the oppression and high-handedness of man, nor is it unpopular in the West owing to the existence of equality between man and woman.

CAUSES OF THE FAILURE OF POLYANDRY

The main cause of the failure of polyandry is that it neither suits man's nature nor woman's. It does not suit man's nature, because firstly, it does not conform to his monopolistic spirit and, secondly, because it is not in agreement with the principle that a father should be confident of his paternity. It is human nature to have an attachment with one's children. Every human being is, by nature, keen to beget children and wants that his relationship with his past and future generations should be definite and satisfactory. He wants to know whose son and whose father he is. Polyandry does not agree with this instinct of man. On the other hand polygamy creates no such problem, neither in the case of man nor in that of woman. It is reported that once, about forty women came to Imam Ali (P) and asked him why Islam had allowed men to have several wives, but had not allowed women to have several husbands. They asked whether it was not a case of undue discrimination.

Imam Ali (P) ordered some cups of water to be brought in and gave one cup to each women. Then he ordered them to pour all the water into a big utensil, which was placed in the middle of the room. When the order had been carried out, he asked them to fill their cups again, but only with the water which they originally contained. The women said that it was not possible as the whole water had mixed. Imam Ali (P) said that if a woman had several husbands, they would naturally have sexual connections with her. If she became pregnant and gave birth to a child, it would not be possible to determine as to who was the father of that child.

As far as woman is concerned, polyandry is neither in her interest nor does it conform to her nature. Woman does not want a husband to satisfy her sexual instinct only. Had it been so, it could be said: 'the more, the better'. Woman wants a man whose heart she may control, who may be her protector and defender, who may make sacrifices for her and who may work hard and bring money for her. The money which a woman earns through her own work and labour neither meets her requirements, nor has the same value as that which is given to her by the man who loves her. A husband meets the financial needs of his wife with the spirit of sacrifice. The wife and the children are the best and the strongest incentive for man to work.

In the case of polyandry woman cannot claim the love, devotion and sacrifice of any man. That is why, like prostitution, it has always been abominable to woman. Hence, polyandry neither conforms to the wants and the leanings of man, nor to those of woman.

FAILURE OF SEXUAL COMMUNISM

In the case of sexual communism, neither a man can align himself with any particular woman, nor can a woman with any particular man, and that is the reason why it could never become popular. It was proposed by Plato who limited its scope to the ruling class or the 'philosopher-rulers'. But his suggestion was not liked by others, and he himself had to revise his opinion.

During the past century, Frederick Engels, the second father of communism, put forward this idea and strongly advocated it. But it was not accepted by the communist world. It is said that the Soviet Union tried to implement the family theory of Engels, but following some bitter experience had ultimately to recognise monogamy as the official policy.

Polygamy may be regarded as a matter of pride for man, but polyandry has never been and will never be a matter of pride for woman. The reason is that man wants the body of woman and woman wants the heart of man. So long as man controls the body of woman, it is immaterial for him if he loses her heart. That is why man attaches no importance to the fact that, in the case of polygamy, he is deprived of the love and devotional sentiments of woman, But for woman the main and the most important thing is man's heart and his sentiments. If she loses them, she loses everything.

In other words, there are two important elements of matrimonial life, one material and the other sentimental. The material element of matrimony is its sexual aspect, which is at its height during youth and gradually declines afterwards. The sentimental element consists of mutual tender feelings and earnest devotion. It grows and becomes stronger with the passage of time. The nature of woman being different from that of man, she attaches more importance to the sentimental aspect of matrimony. But for man either the material aspect is more important or, at least, both the aspects are of equal importance.

We quoted earlier a lady psychologist who is of the view that woman has a mental disposition of her own. The child develops and grows in her womb and is nursed on her lap. She badly needs the devotion and attachment of her husband in the capacity of the child's father. Even the amount of her own affection and love for her children is directly in proportion to the amount of the love shown to her by their father, Only monogamy can meet this requirement.

It is a grave mistake to compare polyandry with polygamy and to say that there is no difference between them. It is also wrong to say that polygamy became popular in certain parts of the world, because man belonged to the stronger sex, and polyandry could not do so, because woman belonged to the weaker sex.

A contemporary writer, who happens to be a woman, says:

"We can say that as man can have four wives, woman also should have a similar right, for both are human beings. This logical conclusion is most appalling to men. They are enraged on hearing such an argument and shout: "How can a woman have more than one husband?" In reply we quietly say: "How can a man have more than one wife?"

She further says: "We do not want to promote immorality or to belittle the importance of chastity. We only want to make men understand that the views held by them, about women, are not based on any solid ground. Man and woman are equal as human beings. If man has the right to have four wives, woman also must have the same right. Even if it is granted that woman is not intellectually superior to man, it is certain that spiritually and mentally she is not weaker than he is."

As you might have observed, the above statement makes no distinction between polyandry and polygamy, except that man being the stronger sex has adopted polygamy to his own advantage, and woman being the weaker sex could not do so.

The above writer further says that man regards woman as his property, and that is why he wants to have several wives. In other words, he thus wants to acquire as much property as practicable. Woman, being in the position of a slave, cannot have more than one master.

Contrary to the views of this writer, the fact that the system of polyandry has never been accepted by any large section of people proves that man does not regard his wife as his property, for, as far as property is concerned, it is a common practice all over the world to own it jointly and to be benefited by it jointly. Had man considered woman to be his property, he certainly would have had no objection to sharing it with others. There is no law in the world, restricting the ownership of a property to one owner only.

It is said that the husband is one individual and the wife is another individual. They should have equal rights. Why should the husband have the right of enjoying polygamy and why should the wife not have the right of enjoying polyandry?"

We say, here lies the mistake. You presume that polygamy is a part of the rights of the husband and polyandry a part of the rights of the wife. The fact is that polygamy is a part of woman's rights and polyandry is neither a part of man's rights nor of woman's rights. It is against the interests of man and woman both. We shall prove later that the system of polygamy has been laid down by Islam with a view to safeguarding the interests of woman. Had the intention been to be partial to man, Islam could have allowed the husband to have extra-marital affairs with a woman other than his wife and would have laid no responsibility on him with regard to his legal wife and legal children.

Polyandry has never been in the interests of woman. It is not a right of which she has been

deprived.

The writer whose views we have quoted has said: "We want to make men understand that the views held by them about women are not based on any solid ground".

Coincidentally, that is what we also want to do. In the following chapters we propose to explain the basis of the Islamic views regarding polygamy.

We invite all thinking people to look into it and see if the Islamic views are, or are not, based on any solid ground. We give our word of honour that we shall withdraw all what we have said, if it is proved by anybody that the basis of the Islamic viewpoint is defective.

HISTORICAL CAUSES OF POLYGAMY (II)

Man's lust for indulgence in sensual pleasure and his unrestricted domination alone are not a sufficient cause for the emergence of polygamy. There must be some other contributory causes also for a licentious man to satisfy his taste for variety. It is easier and less cumbersome to indulge in free love instead of having a woman of his choice as his legal wife and shouldering the responsibility of the maintenance of her possible future children. Plurality of wives gains popularity only in the societies where there are moral and social restrictions on free love and a voluptuary has to pay the price of seeking variety by accepting the woman concerned as his legal wife and by shouldering the responsibility of fatherhood of her children.

Now let us see whether there is any contribution of geographical, economic or social factors in this respect.

GEOGRAPHICAL FACTORS

Montesquieu and Gustav Leobeon insist that climatic conditions are the main cause of the development of polygamy. These intellectuals believe that the climate of the East is such that this custom is inevitable there. In the Eastern countries puberty and old age in females commence earlier and, therefore, a man requires a second and a third wife. Moreover, they think that one woman cannot satisfy the sexual needs of a man brought up in the Eastern climate.

Gustav Leobeon in his book, History of Islamic and Arab culture says: "The custom of

polygamy was not introduced by religion. It is an outcome of the climatic conditions, the racial characteristics and other causes related to life in the East. It needs not be emphasised that these are very strong and effective factors. Furthermore, their physical and temperamental traits, their nursing of children and their ailments and diseases often

force the women of the East to keep themselves aloof from their husbands. As the climatic conditions and the national characteristics of men in the East are such that they cannot bear even temporary separation, polygamy has become customary".

Montesquieu in his book, the Spirit of Law says: 'In tropical countries women attain puberty at the age of eight, nine or ten years and after being married, soon become pregnant. It may be said that in tropical countries, pregnancy immediately follows marriage".

Predo, giving an account of the life of the Prophet of Islam, states that he married Khadijah, at the age of five and consummated the marriage at the age of eight. Because of a very early marriage, women in the tropics become old at the age of twenty. He says that before they become mature, they are already old. In the countries having a temperate climate women retain their charm and beauty for a long time. They attain puberty at a later age and they are more mature and experienced at the time of their marriage. They have children at a comparatively advanced age and the husband and the wife become old almost at the same time. That is how equality between man and woman is established and men do not need to have more than one wife.

Thus it is because of the climatic conditions that the law prohibits polygamy in Europe and allows it in Asia.

The above explanation is in no way correct. The custom of polygamy is not confined to tropical regions in the East. During the pre-Islamic period this custom was common in Iran, where the climate is temperate. It is purely fictitious to say that in the tropics, women get old at the age of twenty, as alleged by Montesquieu. It is even more fantastic to say that the Prophet of Islam, married Khadijah at the age of five and consummated it at the age of eight. Everyone knows that at the time of their marriage Khadijah was forty and the Prophet was twenty -five.

Secondly, if it is accepted that the early onset of old age in women and the intense virility in men are the causes of this custom, why did the people of the East not adopt the practice of free love and debauchery, as the people of the West did both during the Middle Ages and in the modern times. In the West, as Gustav Leabeon has pointed out, monogamy is found only in the legal books and there is no trace of it in daily life.

Again, in the East polygamy exists in its legal form. The man has to accept the woman as his legal wife and has to bear the responsibility of her children. In the West, it exists in an illegal

and clandestine form. Man indulges in free love and escapes all matrimonial responsibility.

POLYGAMY IN THE WEST

We deem it necessary to give a brief account of polygamy in Europe during the Middle Ages, as described by an eminent Western historian. This account should convince those who criticise the East for polygamy that in spite of all its defects it is much more dignified than what existed in Europe.

Will Durant in his book, History of Civilization, vol.17, gives an interesting account of the state of morality in Italy during the renaissance. We give below a summary of what he has said under the heading 'Morals in Sexual Relations'.

In the course of his brief introduction he says that before describing the morals of the laity it may be pointed out that by nature man is polygamous. Only strict moral restrictions, an adequate amount of hard work and poverty, and a continuous vigilance of the wife can compel him to maintain monogamy.

Then he says that adultery was not uncommon during the Middle Ages, prior to the Renaissance. As during the Middle Ages the guilt of adultery was extenuated by chivalry, similarly, during the Renaissance period, it was watered down among the educated classes by the craving for the polished manners and the refined spirit of the females. Girls belonging to respectable families were, to a certain extent, kept segregated from the males not connected with their own family and were taught the merits of pre -marital chastity. Sometimes these instructions were exceptionally effective. It is reported that a young woman, after being assaulted, drowned herself. That must have been an exceptional case, because a bishop took the trouble of installing her statue after her death to commemorate her chastity.

The number of pre-marital affairs must have been considerable, because there were innumerable children born of illegitimate relations in every town of Italy. It was a matter of pride not to have an illegitimate child, but to have one was not a matter of shame. Usually a husband persuaded his wife at the time of the marriage to bring her illegitimate child with her, to be brought up along with his children. Illegitimacy was not a slur on the reputation of anyone. Furthermore, a certificate of legitimacy could easily be obtained by bribing a clergyman. In the absence of other lawful or eligible heirs, an illegitimate son could inherit property and even a crown, as Frante-I, succeeded Alfonso-I, King of Naples. When in 1459 Pius-II came to Bavaria, he was received by seven princes, all of whom were illegitimate. Rivalry between the legitimate and illegitimate sons was an important cause of a long series of commotions during the Renaissance period. As far as homosexuality is concerned, it was only a revival of the ancient Greek tradition.

San Bernardino found this sort of perversion so common in Naples that he thought it to be threatened with the fate of Sodom. Artino found the perversion equally prevalent in Rome. The same thing can be said about prostitution. In 1490, out of a total population of 90,000, there were 6,800 registered prostitutes in Rome. Of course, this figure does not include clandestine and unofficial prostitutes. According to the statistics of 1509, out of a population of 300,000 of that city, there were 11,654 prostitutes. In the 15th century, a girl who had reached the age of 15 without having a husband, was regarded as a slur on the fair name of her family. In the 16th century, the 'age of disgrace' was extended up to 17 years, to enable the girls to receive higher education. Men, who enjoyed all the facilities provided by widespread prostitution, were attracted to marriage only if the woman concerned promised to bring a considerable dowry. According to the system of the Middle Ages, husband and wife were expected to love each other and share each other's joy and grief. Apparently in many cases this expectation came true, but still adultery was rampant. Most of the marriages of the upper classes were diplomatic unions contracted for political and economic gains. Many husbands regarded it as their right to have a mistress. The wife might feel dejected, but usually connived at the situation.

Among the middle classes, some people thought that adultery was a lawful pastime. Machiavelli and his friends apparently did not feel uneasy about the stories of their unfaithfulness which they exchanged with each other. When in such cases, the wife followed the example of her husband to wreak vengeance upon him, he usually connived at her behaviour and did not feel jealous or perturbed.

This was a specimen of the life of the people who regard polygamy as an unpardonable crime of the East and have occasionally blamed its climate for this supposedly inhuman custom. As far as their own climate is concerned, it does not allow them to be unfaithful to the wives and to exceed the limits of monogamy!

By the way, it should be remembered that the absence of lawful polygamy among the Europeans, whether good or bad, has nothing to do with the religion of Christ, who never prohibited it. On the other hand, it confirms the rules of the old Testament, which expressly recognise polygamy. Thus we can say that, in fact, the religion of Christ allows polygamy, and the ancient Christians have actually practised it. Hence, the legal abstinence of the Europeans from it must have some other reason or reasons.

MENSES

Some others attribute polygamy to woman's menstrual periods and her aversion to sex during that time as well as to her exhaustion after child-birth and her desire to avoid sexual

intercourse during the nursing period.

Will Durant says that in the primitive societies women grow old quickly. That is why, in order to be able to nurse their children for a longer period, to lengthen the interval between their own pregnancies, without interrupting the husband's desire to have children, and to enable him to satisfy his sexual urge, they encourage their husbands to have a new wife. It has been often observed that the first wife, with a view to making her own burden lighter, has persuaded her husband to contract another marriage in order to have more children and to acquire more wealth.

There is no doubt that woman's menstrual periods and her exhaustion as the result of child-bearing place man and woman, sexually, in dissimilar positions.

These reasons often make men turn to another woman, but they alone cannot be a sufficient cause of polygamy, unless there exists some social or moral impediment preventing man from indulging in free love. The above factors can be effective only when man is not free in the pursuit of his sexual desires.

LIMITATION OF THE PERIOD OF FECUNDITY IN FEMALES

Some believe that the limitation of the period of fecundity of a woman and her menopause, are one of the causes which gave rise to polygamy, for it may happen that a woman reaches this age without being able to bear enough number of children. It is also possible that her children may have died.

In such cases, if the husband does not like to divorce his first wife and at the same time wants to have more children, he has no alternative but to have a second, or sometimes even a third wife. Similarly, the sterility of the first wife may be another reason for the husband in contracting a second marriage.

ECONOMIC FACTORS

Some economic factors have also been mentioned as the cause of polygamy. It is said that in ancient times, several wives and a large number of children were regarded as an economic asset. Man extracted work from his wife and children and treated them like slaves. Sometimes he even sold them out. Most of the slaves were not captured in battles, but were sold by their fathers.

This may be a cause of polygamy, because man can have children only by accepting the woman as his legal wife. Free love cannot ensure this advantage. Anyhow, this cause cannot explain all the cases of polygamy.

Some primitive people had several wives with this idea. But that was not the case with all the people. In the ancient world polygamy was customary among the classes which lived with dignity and decorum. The kings, the princes, the chiefs, the divines and the merchants had several wives.

As we know, these classes never exploited economically their wives and children.

NUMBER OF MEMBERS OF A FAMILY

Interest in the numerical increase of the children and the expansion of the family has been another cause of polygamy. The position of a man and a woman with regard to the number of children each of them can have is different. The number of children a woman can bear is very limited, whether she has one husband or several husbands. But the number of children which a man can beget depends on the number of women he has at his disposal. It is theoretically possible that a man may have thousands of children by hundreds of wives. Unlike the modern world, in the ancient world the number of family members was counted as an important social factor. The tribes and the clans did all they could to increase their numbers It was a matter of pride for the ancient people to have a large tribe. It is obvious that polygamy was the only means of achieving that end.

NUMERICAL SUPERIORITY

The last and the most important factor, which has contributed to the emergence of the custom of polygamy, is that women have always outnumbered men. It is not that the birth-rate of females is greater than that of males. If occasionally in certain places more females are born, in other places more males are born. But still the number of the women eligible for marriage is always higher than the number of men so eligible. The reason is that the mortality rate among men has always been higher. It is possible that, in case monogamy is enforced strictly, a large number of women will go without having legal husbands, legal children and a household life.

There can be no doubt that at least in the primitive societies this was the position. We have already quoted Will Durant, who says that in primitive societies the life of man was

constantly in danger because he was always busy with hunting and fighting, and that is why the rate of mortality among men was higher than among women. As the number of women increased, there were only two alternatives: either to adopt polygamy or to force a large number of women to pass their entire life as spinsters.

RECAPITULATION

We have described above all the causes which can be presumed to be the source of polygamy. As you must have observed, some of these causes such as climate are actually no causes at all. Hence we ignore them. Other causes can be classified into three categories. The first category includes those causes which might have been effective in persuading man to adopt polygamy, but they provide no justification for his action. They have an aspect of oppression, high-handedness and cruelty. The economic causes come under this category.

It is evident that the sale of children is one of the most cruel and barbaric human acts. To resort to polygamy for this purpose is as unlawful as this act itself.

The second category includes those causes which may be regarded as a justification as far as the husband or society is concerned. Sterility of the first wife, her reaching the age of menopause while the husband still requires a child or the need of a large body of people by the tribe or the country, are such causes. As a general rule, all causes, which emanate from the dissimilarity between husband and wife as regards their sexual needs or procreation power, have a justifying aspect.

The third category consists of a cause which, if it is admitted that it ever existed or still exists, not only provides a justification for polygamy, but also makes it obligatory. In this case, polygamy is a woman's right which man and the society must discharge. This cause is the numerical superiority of women over men. In case the number of women eligible for marriage is larger than the number of such men, polygamy becomes an obligation of men and a right of woman, for, in the case of legally enforced monogamy, a number of women are bound to be deprived of their right of family life.

The right of marriage is a basic human right and no one can be deprived of it under any pretext. Society cannot take any action which may deprive a section of the people of this right.

The right of marriage is as natural a right as the right of freedom, the right to work and the right to get food, shelter and education. Hence, the law of monogamy is repugnant to the natural human rights in the case of the existence of a larger number of women eligible for marriage than the number of available men.

This, at least, has been the case in the past. In the next chapter we shall see whether there still exist circumstances which not only justify polygamy, but also create a woman's right to it. And if such circumstances do exist what is the position of this right vis-a-vis the right of the first wife?

RIGHT OF WOMAN IN "MORE-THAN-ONE" MARRIAGE

We have explained the causes of the failure of polyandry and the prevailing of polygamy and have shown that multifarious causes have contributed to the origin of the latter custom. Some of the causes originated from the man's spirit of oppression and domination and others from the disparity between man and woman as regards the duration of their power or procreation and the number of children which each of them can beget. The latter type of causes can be regarded as a justification for polygamy. But its main cause, throughout history has been the numerical superiority of women eligible for marriage over such men. This cause leads to the creation of a right of woman and an obligation of man.

To avoid a lengthy discussion, we skip over those causes which can be regarded merely as a justification for polygamy and confine our attention to its main cause which, when in existence, turns it into a right of the fair sex.

To prove the case two preliminary points have to be established. First it is to be proved that according to the reliable statistics the women eligible for marriage actually outnumber such men. The second point to be proved is that the actual existence of circumstances creates a right which married men and women owe to the women who have been deprived of marriage.

As for the first point, fortunately almost authentic statistics exist in the modern world. A census is taken in every country periodically. In the advanced countries not only are the total figures of males and females collected, but the number of men and women in various age groups is also shown. These figures are regularly published by the United Nations in its annual reports on world population.(We have before us the 1964 report, republished in 1965.)

It may be pointed out that for our purpose it is not enough to know the total number of males and females in any given country. Simultaneously, we should also know the ratio between the number of men and the number of women eligible for marriage. In most cases this ratio is different from that which exists between the total population of males and the total population of females. There are two reasons for this difference. One is that the onset of puberty in females is earlier. That is why in most countries the legal age of consent in the case of girls is lower than in the case of boys. Practically in most of the countries of the world the husband is

on an average five years older than the wife.

The other and the more important reason is that the mortality rate among the boys is higher than among the girls, with the result that during the marriageable age the balance between them is upset. Sometimes the disparity becomes very marked. It may be that the total number of males and females in a country is almost equal, or even the number of males is higher, but still the girls of marriageable age far exceed the boys of the corresponding age group.

The United Nations Population Report for the year 1964 bears witness to this fact.

For instance, according to this report, the total population of the Republic of Korea is 26,277,635 people. Out of this total 13,145,289 are males and 13,132,346 are females. Thus the number of males is 12,943 more than that of females. This ratio is maintained in the children of less than one year, of 1 to 4 years, of 5 to 9 years, of 12 to 14 years and of 15 to 19 years.

Statistics show that in all these age groups the number of males is larger than that of females. But in the age group of 20 to 24, the ratio changes. In this age group the total number of males is 1,083,364 and the total number of females is 1,110,051. In all the higher age groups, which are the groups of marriageable age, the number of females is greater.

Still the case of the Republic of Korea, where the total number of males is greater than females, is exceptional. In almost all other countries, not only in marriageable age groups but also in the total population, the females outnumber the males. For instance, the total population of the Soviet Union, is 216,101,000 and out of this total 97,840,000 are males and 118,261,000 are females. This disparity is maintained throughout all age groups, pre-marriageable as well as marriageable, that is from 20 years to 24 years, from 25 years to 29 years, from 30 years to 34 years and even from 80 years to 84 years.

The same is the case with other countries, such as England, France, West Germany, East Germany, Czechoslovakia, Poland, Rumania, Hungary, U.S.A., Japan etc. Of course at certain places, such as West Berlin and East Berlin, the disparity between the number of males and the number of females is abnormally large.

In India, in the marriageable age group the number of men exceeds the number of women. Only in the age group of 50 and above, the number of women is greater. Apparently the supposed paucity of women is due to the fact that many people in that country do not like to mention the names of their young wives and young daughters at the time of census.

According to the figures of the last census, Iran is one of the exceptional countries, where the number of males exceeds the number of females.

It is surprising that some critics insist that the law allowing polygamy should be abolished at least in those countries where the number of men exceeds the number of women. In the first instance, this law is universal. It is not meant for any particular country. Secondly it is not enough to know the ratio of males and females in the total population. We have seen that in the Republic of Korea, though the number of males is greater in the total population, there are more females in the marriageable age group. Furthermore, the census figures are not very reliable in many countries. For example, we know for definite that though polygamy has been customary in Iran, both in the urban and the rural areas, yet never has a shortage of would-be brides been felt there. This fact speaks better than the census figures.

Ashley Montague, in his book, 'Woman the Superior Sex', admits that throughout the world the number of women in the marriageable age exceeds the number of men.

The statistics of 1950 show that the number of women of marriageable age in America exceeded the number of men by about one million four hundred and thirty thousand.

Bertrand Russell in his book, 'Marriage and Morality' says that, in the present day England, more than two million women exceed men. According to the custom they should forever remain childless, which is a big privation for them.

Some years ago a news item appeared in the press. It said that following much pressure by those German women, who were unable to get husbands and family life, because of the huge German casualties in the Second World War, the German Government had approached Al-Azhar University to provide it with the formula of polygamy. Later it was learnt that following serious opposition by the Church the proposal had to be dropped. The Church preferred the privation of women and the spread of licentiousness to the system of polygamy, because this system is Eastern and Islamic.

WHY ARE THERE MORE WOMEN OF MARRIAGEABLE AGE THAN MEN?

Though the birth rate of girls is not higher than that of boys, yet there are more women of marriageable age than men. The reason is clear. The mortality rate of men is higher. Deaths usually occur at the age when man should normally be the head of a family. If we take into consideration the deaths which occur following accidents such as, wars, drowning, falls, motor collisions etc. we shall find that most of the victims are men.

It is seldom found that woman is among the victims. Whether it is a case of a clash between human beings or between man and nature, most of the victims are male adults To know why the balance between men and women of marriageable age is upset it is enough to realise that

since the beginning of human history there has not been a single day when wars have not been waged and men have not perished.

The casualties resulting from wars in the industrial age are a hundred times more than those which occurred in the hunting age or in the age of agriculture. During the last World War, the casualties numbered about seven million. You will agree with us if you calculate the casualties of the regional wars in the Far East, the Middle East and Africa during the past decade only.

Will Durant says that several factors have contributed to the decline of this custom (polygamy). Stable agricultural life has lessened the hardships and perils of the life of men, with the result that the number of men and women has almost equalised.

What Will Durant has said is quite amazing. Had the losses of human life been confined to the struggle of men against nature, there would have been a difference between the hunting age and the agricultural age. But the wars have taken a greater toll of men's lives and the number of war casualties has not gone down in any age. Further, the main reason why women have suffered less casualties is that men have always protected them and have themselves shouldered the most dangerous jobs. Thus like the hunting age disequilibrium has continued during the agricultural age also.

Will Durant has not uttered a word about the industrial age, though this is the period which has witnessed the greatest killings of men and during which the balance has been badly upset.

WOMAN HAS A GREATER POWER OF RESISTANCE AGAINST DISEASES

It has been lately discovered that man possesses lesser power of resistance against disease than women. This is another reason why the mortality rate among men is higher.

Some years ago, the French Bureau of Statistics reported that in France, 105 boys were born against every 100 girls and the number of women exceeded the number of men by one million, seven hundred and fifty-eight thousand. It attributed the difference to the female power of resistance against disease.

Not long ago an article was published in the illustrated UNESCO magazine, Courier. According to this article, woman is intellectually superior to man. Her average longevity is more. Usually she is healthier than man and has a greater power of resistance against disease. She is cured earlier. Against one stammering woman there are five stammering men. Against

one colour-blind woman there are 16 colour-blind men. Haemorrhage is almost confined to men. Women are more immune against accidents. During the last World War it was proved that, in similar circumstances, woman could bear the hardships of blockades, prisons and concentration camps better than man. Almost in all countries the cases of suicide by men are three times those by women.

Ashley Montague has mentioned his theory of woman's greater power of resistance against disease in his book, 'Woman - the Superior Sex'.

If by chance one day man decides to wreak his vengeance upon woman and succeeds in plunging her into the most dangerous and fatal jobs or pushes her into the battlefield to face the guns and the bombs, even then the balance between men and women will not be restored, because she has a greater power of resistance against disease.

This much is about the first point viz. numerical superiority of the women of marriageable age over the men of marriageable age. We know that this superiority is an actual fact. We also know its causes. And its cause or causes from the beginning of the human history do exist even now.

RIGHT OF WOMAN IN POLYGAMY

The second point is that the numerical majority of women of marriageable age not only creates a right for them but also an obligation for men and married women.

There is no denying the fact that marriage is one of the most natural and most basic rights of human beings. Everybody, whether man or woman, has the right to lead a family life and have children. This right is similar to that of doing work, having a house, receiving education, utilising the health services and enjoying freedom and security.

It is the duty of the society not to place any obstacles in the way of the enjoyment of this right. On the other hand, it should provide all possible facilities for this purpose.

In our opinion it is a big drawback of the Universal Declaration of Human Rights that it has not paid any attention to this right. It has recognised the right of liberty and security, the right of approaching competent national tribunals, the right of having a nationality and changing it, the right to marry without any limitation of race or religion, the right to own property, the right to form an assembly, and the right of rest and leisure, but it does not mention the right of leading a legal family life.

For a woman this right is of utmost importance, for she needs a family life more than a man.

As we have already said, to a man the material aspect of marriage is more important and to a woman its spiritual and sentimental aspect. If man has no family, he can at least partially fulfil his needs by indulging in free love and debauchery. But to a woman a family has a greater importance. Debauchery cannot even partially fulfil her material and sentimental needs.

To a man the right of having a family means the right to satisfy his lust, the right to have a partner in life and the right to have legal children. But to a woman it also means the right to have a protector and patron and the one from whom she may draw moral support.

After the establishment of the two premises, viz. the number of women eligible for marriage is larger than the number of men and it is a natural human right to have a family life, it is easy to draw the conclusion that if monogamy is regarded as the only legal form of marriage, a large number of women are bound to be deprived of their natural right, and it is only polygamy, which of course with specific conditions, can restore it.

It is the duty of liberal-minded Muslim women that they, in the name of defending the just rights of women at large, in the name of protecting morality and in the name of protecting the human race, call upon the U.N. Commission for Human Rights to recognise officially the Islamic system of plurality of wives as a human right, and thus render a great service to the fair sex and to morality. The fact that a formula has come from the East and the West has to follow it, should not be regarded as a sin.

RUSSELL'S THEORY

As pointed out earlier, Bertrand Russell was conscious of the fact that in the case of monogamy being the sole form of marriage, a large number of women are to be deprived of their right. He has suggested a very simple solution to the problem. He wanted women to be allowed to entice men and bear father-less children. As the father usually supports the children, the government should take his place and give a subsidy to the unmarried mothers.

Russell says that at present, in Britain, there are more than two million surplus women who cannot ever hope to have children because of the law of monogamy. This is a big privation. He says that the system of monogamy is based on the presumption of approximate numerical equality between men and women, but where no such equality exists it gives a raw deal to those women who, in accordance with mathematical law, are doomed to remain unmarried. Anyhow, if it is desired to increase the population, such a raw deal is not even in the public interest, let alone in the private interest.

This is the solution of this social problem, as suggested by a great philosopher of the 20th

century. But, according to Islam, the whole problem is solved if an adequate number of men having the necessary financial, moral and physical qualifications agree to bear the responsibility of more than one legal wife showing no distinction between her and his first wife and between the children by both of them. The first wife should accept the second one cheerfully with the spirit of doing a social duty, which is most necessary and the best form of morality.

Contrary to the Islamic mode of thinking, this philosopher advises the deprived women to steal the husbands of other women and call upon the government to support the children born of such illicit connections.

It appears that this philosopher of the 20th century maintains that woman needs marriage only for three reasons:

to satisfy her sexual needs, to get children and to meet her economic requirements. The first two needs can be met on the sly. As for the third one, it should be looked after by the government. He forgets that woman also has some sentimental needs. She wants that she should be under the protection of a loving husband and that her contact with him should not be merely of a sexual nature. Another point to which this philosopher attaches no importance, is the position of the children born of illicit connections. Every child needs well-recognised parents and their sincere love and affection. Experience has shown that the mother seldom shows affection to that child of hers whose father is not known. How can the lack of this love be compensated? Can the government do anything in this respect?

Lord Russell regrets that a large number of women will have to remain childless unless his proposal is given a legal form. But he should have known that the British women cannot wait for any law. They themselves have already solved the problem of maidenhood and the fatherless child.

In the annual report for 1958, prepared by Dr. Z.A. Scott, head of the Medical Department of the London Council, it was pointed out that out of every ten children born in the previous year one was illegitimate. The report further said that illegitimate births were constantly on the increase. The figures of illegitimate births shot up from 33,838 in 1957 to 53,433 in the following year.

It appears that the British people have solved their problem without waiting for the enactment of Lord Russell's suggestion.

POLYGAMY PROHIBITED, HOMOSEXUALITY PERMITTED!

The British Government instead of acting upon the advice of Lord Russell and solving the problem of unmarried woman has taken a step in the opposite direction. It has more than ever deprived woman of the male sex by legalising homosexuality. At present polygamy is prohibited in Britain, but homosexuality is lawful.

In the eyes of the British people it is inhuman to have a woman as a second wife. But if the second "wife" happens to be a male, then there is no harm. They regard homosexuality to be a dignified act in conformity with the requirements of the 20th century. According to the verdict of the British authorities, plurality of wives is not objectionable provided the wives other than the first one have whiskers. It is said that the Western world has solved the sexual and family problems, and we should follow its example. This is how it has solved them.

This Western action is not surprising in the least, for it is a logical outcome of the way the West is going.

What is surprising is that our people, especially the educated young men, have lost their power of independent thinking and analysing problems. They have lost their personalities. They are too credulous. If they have a diamond in their hand and the people from the other side of the world say it is a walnut, they throw it away. But if they see a walnut in the hand of an alien and are told that it is diamond, they readily believe that.

IS MAN POLYGAMOUS BY NATURE?

You will be surprised if you are told that the psychologists and the social philosophers in the West believe that man is born polygamous and monogamy is against his nature.

Will Durant, explaining the present day moral chaos, says that much of it is due to our incurable interest in variety. Man by nature cannot be content with one woman.

He says that by nature man is polygamous. Only the strongest moral restrictions and an appropriate amount of poverty and hard work, along with the external vigilance of the wife, can impose monogamy on him.

The German professor, Schmidt, says that throughout history man has been unfaithful to his wife. There are indications that even during the Middle Ages the young men changed their sweet-hearts again and again, and 50% of the married men were unfaithful to their wives. Robert Kinsey in his report, known as the Kinsey Report, says that American men and women surpass all other nations in unfaithfulness. In another section of the report he says that, unlike man, woman dislikes diversity and that is why she often does not submit to his overtures, but man regards diversity as an adventure. What is more important is that he is more interested in

physical pleasure than in spiritual and sentimental pleasure. Man pretends to have a purely sentimental and spiritual relation only so long as he does not get an opportunity to have physical contact. A famous physician told Kinsey that obviously man was polygamous and woman monogamous, because millions of sperm developed in man while one ovum was produced in the ovary of woman during each period of fecundity. Apart from the theory of Kinsey, it will not be a bad idea if we ask ourselves whether it is difficult for a man to be faithful.

A French sociologist answering this question says that for a man to be faithful is not merely difficult but it is impossible. One woman is born for one man, but one man is born for all women, If a man is unfaithful and betrays his wife, he is not to blame. It is the fault of nature, which has put all the forces of unfaithfulness in him.

A French magazine under the heading, "French way of Love and Marriage", writes that French couples have solved this problem. They know the rules of the game. So long as the husband does not exceed the limits, his occasional affairs with other women are of little importance. As a rule a husband can in no case remain faithful after two years of married life. It is somewhat different in the case of women and fortunately they are aware of this difference. In France, a wife does not feel offended if her husband commits adultery

She consoles herself by saying that he might have taken his body to another woman, but his soul and sentiments continue to be her own.

Some years ago there was a controversy on the views expressed by a biologist named Dr. Russell Lee. He was of the view that a man's contentment with one wife weakened his progeny and hence this action amounted to an act of treachery against the human race. He thought that the system of multi-relations made the children healthy and strong.

We believe that the above description of the nature of man is not correct at all. These thinkers appear to have been inspired by the particular atmosphere prevailing in their own part of the world.

Anyhow, we believe that both biologically and psychologically man and woman are dissimilar to each other and nature has purposely made them so. Therefore, the equality of their rights should not be used as a pretext for the uniformity of their rights. Even from the viewpoint of those who support monogamy, the spirit of woman is different from that of man. Woman is monogamous by nature. Polyandry is against her spirit and does not conform to what she expects of her husband. But man is not monogamous by nature in the sense that polygamy is not against his spirit and is not inconsistent with what he expects of his wife.

But we do not agree with the view that the spirit of man does not conform to monogamy. It is absolutely incorrect to say that his passion for diversity is incurable. We also do not believe

that man cannot be faithful, or that one woman is born for one man and one man is born for all women.

To our belief the causes of man's unfaithfulness are related to the social atmosphere and man's nature is not responsible for it. Factors causing unfaithfulness stem from that atmosphere which, on the one hand, encourages woman to employ all sorts of temptations and seductions to lead a stranger astray and, on the other hand, deprives millions of women of their right of marriage by enforcing the law of monogamy.

In the Muslim East, prior to the introduction of Western ways and manners, 90% of the men adhered to monogamy in the real sense. They neither had more than one legal wife nor did they indulge in concubinage.

POLYGAMY AS THE FACTOR SAVING MONOGAMY

You will be surprised if we say that polygamy was the most important factor which served monogamy in the East. Its legality is really the biggest saving factor, in case the number of women requiring marriage exceeds the number of men eligible for it, because if the right of the surplus women to marriage is not recognised and the morally, financially and physically well-qualified men are not allowed to have more than one wife, free love and concubinage are bound to become rampant, destroying the very basis of real monogamy.

In the Muslim East, on the one hand polygamy was permissible and, on the other, temptations and provocations to immorality did not exist. Therefore, true monogamy prevailed in most of the families. Concubinage never developed to the extent that gradually a philosophy had been invented to justify it. In the East, it was never claimed that man was born polygamous and could not at all adhere to monogamy.

It may be asked what alternative a man has when polygamy is legally prohibited and, as the intellectuals say, man is polygamous by nature.

According to the thinking of these gentlemen the answer is quite clear. Man should be legally monogamous and practically polygamous. He should not have more than one legal wife, but he can cohabit with any number of women he likes. Concubinage is the natural right of man. It is unchivalrous to restrict him to one woman.

We believe that the time has come when the readers should have a clear idea of the problem and should know what the question really is. It is not the question whether polygamy is better

or monogamy. There is no doubt that monogamy is preferable, for monogamy means an exclusive family life. In this system the body and the soul of each of the husband and the wife exclusively belong to the other. It is obvious that the spirit of marriage is the union of hearts which manifests itself better in an exclusive marriage. Humanity does not have to choose between monogamy and polygamy.

The only problem is that absolute monogamy is not practical in certain social circumstances, especially when the number of women in need of marriage is greater than the number of eligible men. Absolute monogamy pervading every family is only a fiction. There are only two alternatives: either to officially recognise polygamy or to encourage unrestricted concubinage. In the case of the first alternative only a small percentage of married men, in no case more than 10% will have more than one wife and all women in need of a husband will be able to secure a home and family life. In the case of the second alter-native every woman having no legal husband will have sexual relations with several men, and thus almost all married men will become practically polygamous.

This is the correct picture of polygamy. But the partisans of the European way of life are not prepared to present the true picture of the problem. They do not want to tell the truth openly. In reality they defend concubinage. They regard the legal wife as a burden and a stumbling-block in their way. T() them even one wife is too much, let alone two, three or four. They pretend to be the supporters of monogamy, but, in fact, complete freedom from matrimonial restrictions is what they would like to have.

WILES OF THE TWENTIETH CENTURY MAN

The 20th century man has succeeded in befooling woman on many questions related to family rights. He uses the high-sounding words of equality and liberty to reduce his own commitments and to add to his opportunities of enjoyment. But there are few questions in respect of which he has been so successful as in disparaging polygamy.

Occasionally we come across writings that make us wonder whether their authors are simpletons or rogues. One writer says: At present, in the advanced countries relations between husband and wife are based on a system of reciprocal rights and obligations, and for that reason it is as difficult for a woman to recognise polygamy in any form, as for a man to bear the existence of rivals in the field of his conjugal relations.

We do not know whether that is their conception of the problem, or they really do not know that polygamy has resulted from a social problem, which puts a heavy responsibility on the shoulders of married men and women and of which, so far, no solution other than polygamy has been discovered. Shutting the eyes to the real problem and raising the slogans 'long live

monogamy' and 'down with polygamy' can serve no purpose.

Do they not know that polyandry is neither a part of woman's rights nor a part of man's rights. It has nothing to do with their reciprocal rights.

It is ridiculous to say that it is as difficult for woman to agree to polygamy as it is for a man to tolerate the existence of rivals in the matter of conjugal relations. Apart from the fact that such a comparison is wrong, it appears that these gentlemen do not know that the present-day Western world, by the glitter of which they are so greatly dazzled, actually requires the husband to respect the love-affairs of his wife and tolerate the existence of rivals. It deprecates any interference on the part of the husband as jealousy and fanaticism. We wish that our young men had a deeper knowledge of what is going on in the West.

As polygamy is the outcome of a social problem and is not man's instinct, it is obvious that in a society where women are not in a numerical majority, it should automatically disappear or at least its incidence should be minimised. But it will not be proper to ban it even in such circumstances, if such circumstances exist at all. Legal prohibition of polygamy is neither sufficient nor something correct. There are certain prerequisites to achieve this end. First of all, social justice should be ensured and adequate opportunities of suitable employment made available for every man, so that everyone eligible for marriage should be in a position to have a family life. The second condition is that every woman should be free to choose her husband and should be under no compulsion by her guardians or anyone else to marry any particular person of their choice. It is obvious that a woman who has a chance to marry a bachelor will never like to marry a man who has a wife. It is only their guardians who sell women for the sake of money and give them in marriage to the moneyed people.

The third condition is that there should not exist too many temptations that seduce even women having husbands not to mention women having no husbands.

Should society be earnestly interested in reformation and in enforcing true monogamy, it should endeavour for the fulfilment of the above three conditions. Otherwise, a legal ban on polygamy will only lead to moral depravation.

CRISIS RESULTING FROM THE PRIVATION OF THE WOMEN HAVING NO HUSBANDS

If the women in need of marriage outnumber such men (bachelors), the prohibition of polygamy is a treachery to

humanity. It is not merely a question of suppressing the rights of some women only. Had it been so, it could have been tolerated to a certain extent. The crisis which society faces as a result of legally enforced monogamy possess a bigger danger than any other crisis, for the family organisation is more sacred than any other organisation.

A woman who is deprived of her natural right is a living being prone to all the reactions of a living being such as in the case of privation. She is a human being who is susceptible to psychic disorders and complexes. She is an Eve armed with the weapons for seducing men.

She is not wheat or barley, the surplus stock of which can be dumped into the sea or stored for any future emergency. She is not a house or a room which, if not acquired immediately, can be locked. She is a living person. She is a human being. She is a woman. She has marvellous potentialities. If she is frustrated she can ruin the society. She cannot be an idle onlooker while others enjoy life. Her privation will give rise to complexes and malice. If malice and instinct join hands together, the consequences can only be catastrophic.

The women deprived of family life will do their utmost to seduce men and to exploit their weakness in this respect. Even then the matter will not end. The wives who will find their husbands to be unfaithful, will think of taking revenge upon them and thus will themselves become unfaithful. About the final result the less said the better.

This final result has been summarised in the well-known Kinsey Report in one sentence: "The men and women of America have surpassed all other nations in unfaithfulness."

It is to be noted that the matter does not end with the corruption and perversion of men. The conflagration in the end also engulfs the women having husbands and families.

VARIOUS REACTIONS ABOUT THE EXCESS OF WOMEN

The phenomenon of the comparative super-abundance of women has always existed in human history, but the reactions to this phenomenon, which create difficulties for the society, have not been the same in all societies. The people who were more attached to the spirit of piety and chastity and were guided by the teachings of the great heavenly religions, solved the problem by adopting the system of polygamy. Other people who were not so greatly attached to this spirit used the phenomenon as a means of indulging in debauchery.

Neither was polygamy in the East introduced by Islam, nor its prohibition in the West in any way related to the religion of Christ. This custom existed in the East before the inception of Islam and was sanctioned by the Eastern religions. Even in the Bible, it has not been prohibited expressly.

A greater blow has been given to monogamy by the nations, which have taken to debauchery, than by those which have adopted polygamy.

Dr. Muhammad Husayn Haikal, author of the book, 'Life of Muhammad' after quoting several verses of the Holy Qur'an on the question of polygamy, says: These verses favour adherence to monogamy. They say that if you fear that you will not be able to do justice to more than one wife, then have only one. Incidentally, they emphasise that absolute justice is not possible. Anyhow in view of the fact that there may be occasions when polygamy is unavoidable, they allow it conditionally. The Holy Prophet himself contracted several marriages, when a large number of Muslim women lost their husbands during the early battles of Islam. Is it possible to say that following wars, epidemics and disturbances which take a toll of thousands and sometimes millions of people, it is still preferable to adhere to monogamy rather than to adopt polygamy as an exceptional case and with the condition of doing justice to their wife or wives? Can the people of the West claim that after the World War the law of monogamy has been enforced in the same way in which it now exists in name?

DRAWBACKS AND DEFECTS OF POLYGAMY

A happy married life depends on sincerity, tolerance, sacrifice and unity. All these things are endangered in the case of polygamy. Apart from the unenviable position of the wives and the children in a plural marriage, the responsibilities of the husband himself are so heavy and crushing that it is no fun to shoulder them -Most of the men, who are happy and satisfied with polygamy, are those who practically evade their legal and moral responsibilities. They turn all their attention to one wife and ignore the other, whom they leave, in the words of the Holy Qur'an, *'hanging'*, What is called polygamy by such people is in reality a sort of monogamy coupled with high-handedness, tyranny and criminal injustice. There is a proverb current among the common people which says: 'One God, One Wife'.

That has been and is the belief of most of the people and, if we measure the problem by the standard of individual happiness, it is correct. The rule of monogamy, if not applicable to all men, is certainly applicable to most of them.

If someone thinks that polygamy, with all the legal and moral responsibilities it entails, is a bed of roses, he is sadly mistaken. From the angle of personal comfort and happiness, monogamy is definitely preferable.

CORRECT APPRAISAL

Anyhow, a correct appraisal of the system of polygamy, which emanates from personal and social needs, cannot be made by comparing it with monogamy. The right way of evaluating such a system is to give consideration to the causes which give rise to it, to see what evil consequences will follow, if those causes are overlooked, and at the same time to give a thought to the defects and drawbacks of the system itself. It is only after fully weighing all the pros and cons of a system that we can arrive at the right conclusion. To illustrate the point we give an example. If we look at the system of conscription only from the angle of the interests and inclinations of a family, to which a recruit belongs, there can be no doubt that the law of conscription is not a good law. It would have been much better if there had been no such law, and no darling of a family had been snatched from his family and, occasionally, sent to the warfront.

But this is not a correct evaluation of the question. Along with the separation of a son from his family, we should also take into consideration the defence requirements of the country. If we do that, it will appear perfectly reasonable and logical that an adequate number of citizens should always be kept ready for the defence of the country and their families should willingly put up with the inconveniences caused by the compulsory military service.

Earlier we referred to some individual and collective needs which sometimes justify polygamy. Now, to prepare the ground for an overall judgement, let us discuss the defects and drawbacks of this system. We admit that it has certain demerits, but we do not believe that all that is said against it is valid. Anyway, we propose to discuss its defects from various angles.

FROM THE PSYCHOLOGICAL ANGLE

The conjugal relations are not confined to such material and physical matters as bodily contact and financial support. If they had been so confined, it would have been easy to justify polygamy, for material and physical matters are divisible between several people, each having a share.

The basis of conjugal relations is emotional and psychological. They are based on such things as love, emotions and feelings. Married life means the union of hearts. Like all metaphysical things, love and feelings are not divisible. They cannot be rationed among several people nor can a definite quota thereof be allotted to any one. A heart cannot be divided between two people. Love and worship are concomitant. They do not admit a rival. Love cannot be measured and distributed like wheat and barley. Furthermore, feelings cannot be controlled.

The heart dominates man, man does not dominate the heart. The spirit of marriage, that is, its

human aspect, which distinguishes the relations between two human beings from the purely instinctive relations between two animals, is neither divisible nor controllable. Hence, polygamy should not be permitted.

To our belief the above statement is exaggerated. It is true that emotions and feelings constitute the spirit of marriage. It is also true that feelings are not controllable. But it is pure fancy, rather a fallacy, to say that feelings are not divisible.

It is not a question of dividing and distributing feelings in the same way as a material object is divided and distributed. It is a question of the mental capacity of man, which is not too limited to accommodate relations with two people. A father having ten sons loves all of them to the extent of worship and makes sacrifices for them.

Anyhow, one thing is definite. Love cannot be as intense in the case of several wives as it can be in the case of one. Intense love is not consistent with plurality, but it is not consistent with reason too.

Russell in his book, 'Marriage and Morality'. says that many people today regard love as a fair exchange of feelings. This argument alone, irrespective of all other arguments, is enough to condemn polygamy.

If it is only a question of fair exchange of feelings. we wonder why the exchange should he monopolistic. A father having several children loves them all and they all reciprocally love him. Is not the exchange of feelings between them fair? Incidentally even in the case of several children, a father's love for each of them is always greater than the love of each child for the father.

The most amazing part of the above statement is that it has been made by a person who advises the husbands to respect their wives' love-affairs with strangers and not to interfere in them. He gives the same advice to the wives also. Does he believe that the exchange of feelings between a husband and a wife will still be fair?

FROM THE ANGLE OF BEHAVIOUR

In the case of polygamy the relations between co-wives are proverbially notorious for incongruity. A woman usually regards the co-wife as her worst enemy. Plurality often induces wives to action against each other and occasionally against the husband also. It creates malice and turns the family atmosphere, expected to be an atmosphere of sincerity and serenity, into a veritable battlefield. Enmity and rivalry existing between the mothers passes on to their children and two or more blocs are formed. The family atmosphere, instead of being the first

school of moral training for the children, turns into a school of dissensions and inhuman behaviour.

There is no doubt that polygamy has all these evil effects. But one point must not be overlooked. We have to see whether they are the natural effects of plurality or the product of the unreasonable attitude of the husband and the second wife. We believe that most of the evil effects are not the direct result of plurality, but are the consequences of its wrong implementation.

Suppose a husband and a wife live together and lead a normal life. In the meantime the husband comes across another woman and takes a fancy to her. After a secret understanding between the two, the second woman raids the house and takes undue advantage of the husband, and challenges the authority of the first. It can be easily imagined what the reaction of the first wife would be. There is nothing more disturbing to a woman than the impression that her husband despises her. To be unable to retain the affection of her husband is the biggest failure of a wife. When the husband takes to arrogance and licentiousness and the second wife plays the role of a freebooter, it is useless to expect the first wife to be patient.

But the things will be different and the internal conflict will be greatly reduced if the first wife knows that her husband is justified in having a second wife and that he is not fed up with her. The husband also must not assume arrogance nor should he indulge in sensuality. After having a second wife, he should more than ever be kind to his first wife and should more than ever respect her feelings. The second wife also should remember that the first wife has certain rights which are to be respected. In short, all the parties concerned should remember that they have taken a step to solve a social problem.

The law of polygamy is a progressive solution of a social problem and is based on the broader interests of the society. Those who execute it, should possess a standard of high-thinking and should be well-trained in the Islamic ways.

Experience has shown that if the husband is neither licentious nor arrogant and the wife is convinced that he needs a second wife, she herself volunteers to arrange the second marriage of her husband. In such cases the aforementioned troubles do not arise, as most of them result from the misbehaviour of the husbands.

FROM THE MORAL ANGLE

It is said that polygamy means indulgence in sensuality. Morality demands that the gratification of sexual desire is minimised, for the nature of man is such that the more he indulges in sex, the more intense his yearning for it becomes.

Montague in his book, 'Spirit of Laws', while dealing with the question of polygamy, says: "The King of Morocco has, in his harem, women of all races including white, yellow and black. Even if this man had twice as many women as he has, he still would have craved for more. Sensuality is like miserliness. The more it is practised, the more intense it becomes. As the collection of more and more gold and silver intensifies greed and avarice, indulgence in polygamy promotes vicious and unnatural ways of love-making, for in the field of sensuality every act which exceeds the limit encourages perversion. When disturbances broke out in Istanbul, not a single woman was found in the harem of the ruler, because he indulged in unnatural love-making (homosexuality).

This objection can be looked at from two angles. Firstly, it has been claimed that sexual acts are repugnant to pure morality and that sexual desire should be controlled to the utmost extent. Secondly, it has been asserted that human nature is such that the more a man indulges in sex, the more intense his yearning for it becomes.

As regards the first view, it may be said that unfortunately it represents a wrong thinking. It has been inspired by Christian, Hindu, Buddhist and Cynic ideas of morality based on renunciation. From the Islamic point of view, it is not correct to say that the less the gratification of sexual desire, the more moral it is. (Perhaps according to this theory perfect morality means no gratification at all). It is only excessive indulgence which is regarded by Islam as repugnant to morality.

To ascertain whether polygamy means excessive indulgence let us see whether by nature man is or is not monogamous. As stated earlier, now nobody believes that man is purely monogamous or that polygamy is an act of perversion. To the contrary many sociologists are of the view that by nature man is polygamous and monogamy is as unnatural as celibacy.

Though we do not believe that man is polygamous by nature, we also do not believe that he is purely monogamous and that polygamy is unnatural and a sort of perversion like homosexuality.

Those who, like Montesquieu, regard polygamy tantamount to licentiousness, have harems in their mind. They think that Islam, by allowing plurality, wants to provide an excuse for the harems of the Abbasid Caliphs and the Ottoman Sultans. But in fact Islam is totally opposed to such a thing. The terms and conditions laid down by Islam in respect of plurality are such that the chances of licentiousness are absolutely eliminated.

As for the second point: that the more the natural desires are satisfied, the more they grow and the more they are suppressed, the more they are pacified, it is diametrically opposed to the current Freudian theory.

According to the Freudists, instinctive desires are pacified if they are satiated, hut if they are suppressed, they become violent. That is why the Freudists advocate complete freedom and the violation of all traditional restrictions and restraints in sexual matters. I wish that Montesquieu had been alive today and had seen how his theory is being ridiculed by the Freudists.

From the Islamic point of view both the theories are false. Human nature has its own laws and limits which must be recognised. It becomes passionate both as a result of privation as well as unrestricted freedom.

Anyway, neither polygamy is immoral and disturbing to spiritual peace, as Montesquieu and the like presume, nor is it against human nature, to be content with one or more legal wives as the Freudists claim.

FROM THE LEGAL ANGLE

By virtue of a marriage contract both the husband and the wife belong to each other, and each of them has a right to enjoy the other. As far as the marital benefits are concerned, the marriage contract creates a sort of proprietary right. In the case of polygamy it is the first wife who has the first claim to the marital benefits, and as such any transaction between the husband and another wife is ultra vires, for the goods under transaction, as marital benefits may be called, have already been sold to the first wife. Hence no subsequent transaction can be valid without her consent. As such, if polygamy is to be allowed, its validity must depend upon the consent and agreement of the first wife. She should have the right to decide whether she can or cannot allow her husband to have another wife.

This means that to have a second, third and fourth wife is just as if a person had sold his property to a person and then resold it to a second, third and fourth customer. The validity of such a transaction will depend on the consent of the first, second and third buyers respectively. If the vendor actually delivers the property to the subsequent buyers without such a consent, he is liable to prosecution.

This objection is based on the presumption that the legal nature of marriage is that of exchange of benefits, and that each of the husband and the wife owns the marital benefits accruing from the other. Though this presumption is not sound, for the present we do not want to dispute it. Let us presume the position to be actually so. But this objection can be valid only in case the husband takes another wife only for fun. Obviously if it is admitted that the legal nature of marriage is that of exchange of marital benefits, plurality of marriage is not justifiable only so long as the wife can in every respect meet the lawful needs of her husband. But if there exists any of the justifying causes mentioned earlier, the objection becomes void.

For instance, if the wife is barren or has attained the age of menopause and the husband is still in need of a child, or the wife is sick and not fit for cohabitation, the right of the wife will be no bar to plurality of marriage.

This is the position in case polygamy is only a personal requirement of the husband. But if it is a social requirement, for example, if women outnumber men in a society or the society needs a larger population, then the case is quite different. In such cases, plurality is a duty which is to be performed by an adequate number of men. It is a duty to be carried out to save the society from corruption and prostitution or to increase the population of the community. When it is a question of social duty, obviously the question of the consent and permission of the wife does not arise. Suppose in a society women outnumber men or the society needs a larger population, then a social duty devolves on all married men and women which should be carried out by an adequate number of them in the spirit of self-sacrifice. This is exactly like the case of conscription. The defence of the country devolves a duty on all families to send their dear ones to the front for the sake of the society. In such cases there is no question of the consent of the parties concerned.

They who maintain that justice demands that polygamy must depend upon the consent of the existing wife, look at the question from a narrow angle. They think that a husband always wants to have more than one wife only for pleasure and variety. They forget that there can be other individual and social needs also. Basically plurality of marriage should not be acceptable even with the consent of the existing wife, if no individual or social need is involved.

FROM THE PHILOSOPHICAL ANGLE

The law of polygamy is repugnant to the principle of equality between man and woman as human beings. As man and woman both have equal rights, either both of them should be allowed to practise polygamy or neither of them. It is a pure and simple discrimination to allow man to have several wives and not to allow woman to have several husbands. To allow man to have up to four wives means that the value of a woman is only one-fourth that of man. This position is derogatory to woman and is not even in keeping with the Islamic view in respect of inheritance and evidence. In respect of giving evidence, two women are regarded as equal to one man.

This is the most flimsy objection. It seems that the critics have paid no attention to the individual and the social causes of polygamy. They think that it is only a question of passion. Hence man and woman should be treated equally. We have already discussed the cases in which polygamy is justified. We have also pointed out the circumstances in which a duty in

respect of a husbandless woman devolves on all married men and women. Hence, it is not necessary to dwell on this question any more.

It is enough to say that if the teachings of Islam in respect of polygamy, inheritance and evidence had been due to any apathy to woman's rights, and had Islam discriminated between man and woman as human beings, it would have held a uniform view on all relevant questions. In the case of inheritance it would not have allowed woman only a half of the share of man in some cases and an equal share in others. Similarly, in the case of evidence there would not have been different rules in different cases. All this shows that Islam has some other philosophy. We have already explained the question of inheritance in a preceding chapter. We have also pointed out elsewhere that from the Islamic point of view the question of equality between man and woman as human beings is a part of basic human rights. Anyhow, while dealing with family rights, Islam has taken into consideration certain other aspects also which are more important than the question of mere equality.

ROLE OF ISLAM IN THE DEVELOPMENT OF POLYGAMY

Islam neither invented polygamy (for it had been in existence for centuries before the inception of Islam), nor did it abolish it, for there existed no other solution of certain social problems. Islam only reformed this ancient custom.

LIMITATIONS

Before Islam, one could have an unlimited number of wives and could form a harem. Islam prescribed a maximum limit. It did not allow anyone to have more than four wives. Those who had more than four wives at the time of embracing Islam were required to release the extra wives.

We come across the names of several such people in the early history of Islam. A man named Ghaylan bin Aslamah had ten wives. Another man named Nawfal bin Mu'awiyah had five. The Holy Prophet ordered them to part with their extra wives.

The Shi'ah traditions report that during the days of Imam Sadiq (P) a Zoroastrian embraced Islam. He had seven wives. The Imam was asked as to what that man should do with his wives. The Imam said that he must part with three.

JUSTICE AND EQUAL TREATMENT

Another reform introduced by Islam was the condition of giving equal treatment to all the wives. Islam does not allow any discrimination between the wives or between their children. The Holy Qur'an expressly says: "If *you [ear that* you *will not do justice* (to *them) then have one only"*. (Surahan-Nisa,4:3)

The Pre-Islamic world observed equality neither between the wives nor between their children. We have already quoted Christenson and others who say that during the Sassanian period polygamy was customary in Iran. One or more wives were called favourite wives and they enjoyed full rights and others known as servant-wives had lesser legal rights. Only the male children of the servant-wives were recognised to be the members of the paternal family.

Islam abolished all such customs and usages. It does not allow any wife or her children to be regarded as inferior to the other wife or children of her husband.

Will Durant in his book, History of Culture, Vol. I, says:

"When a person accumulated wealth he feared that if it would be divided among all his children, each one of them would receive only as small portion of it. So he felt anxious to make a distinction between his real and favourite wife and other mistresses to enable the children of the real wife only to inherit from him."

This shows that in the ancient world discrimination between the wives and between their children was common. Anyhow, surprisingly enough Will Durant adds: "Till recently this continued to be the case in Asia. Gradually the real wife took the position of the sole wife. Other wives either disappeared or became clandestine mistresses."

Will Durant did not take notice of the fact, or he did not want to do so, that 14 centuries ago Islam abolished discrimination between the children. To have one real wife and several secret concubines is a European and not an Asian custom. It has only lately infiltrated into Asia.

Anyhow, the second reform which Islam introduced in the domain of polygamy was the abolition of discrimination between the wives and between their children. No form of favouritism with any particular wife is permissible. Almost all jurists are unanimous on this point. Only a few minor juristical schools have interpreted the rights of women in a way that smacks of discrimination. But there is no denying the fact that their view is in contradiction with the correct interpretation of the Qur'anic passage. The Holy Prophet is reported by both the Shi'ah and the Sunnis to have said: "He who has two wives but does not treat them equally and shows leaning towards one of them, will be raised on the Day of Resurrection in such a state that one side of his body will be dragging along the ground. He will eventually go to

Hell".

Justice is the greatest moral virtue. To prescribe the condition of justice and equal treatment means that the husband is required to be in possession of the highest moral qualities. As the feelings of man in respect of all his wives usually are not the same, observation of justice and abstinence from unequal treatment is one of his most onerous duties.

We all know that the Holy Prophet, during the last ten years of his life, that is, during the period of his stay in Madina, married several women. This was a period of Islamic wars and at that time the number of women, who had nobody to look after them, was quite large. Most of the wives of the Prophet were widowed and aged. Several of them had children by their former husbands.

The only maiden he married was Ayesha, who often proudly said that she was the only woman whom no husband other than the Prophet, had ever touched.

The Holy Prophet, always gave strict equal treatment to all his wives and never discriminated between them. Urwah bin Zubayr was a nephew (sister's son) of Ayesha. He inquired of his aunt as to how the Holy Prophet treated his wives. Ayesha said that he treated them with justice and complete equality.

He never gave preference to anyone of them over anyone else. Almost daily he called on every wife and inquired after her health etc. He passed the night with one wife, turn by turn. If by chance he wanted to pass a night with another wife, he formally came to the wife whose turn it was and took her permission. If the permission was given, he would go, otherwise he would not. Ayesha said that she personally declined to give permission as and when he asked for it.

Even during his last illness which led to his death and when he was too weak to move, the Holy Prophet scrupulously adhered to the principle of equality in his treatment with his wives. His bed was shifted from one room to another daily. At last, one day he called all his wives and asked them to permit him to stay in one room. With their permission he stayed in the room of Ayesha.

At the time when he had two wives, Imam Ali (P) was so particular that he performed even ablution before prayer *(wuzu)* in the house of the wife whose turn was there.

Islam attaches so much importance to the principle of justice and equality in treatment that it does not allow the husband and the second wife to enter into an stipulation at the time of their marriage, by which the second wife agrees to live on unequal terms with the first wife. This means that it is an obligatory duty of the husband to treat each wife on terms of strict equality, and that he cannot renounce this responsibility by entering into a prior agreement with anyone

of his wives. All that the second wife can do is to forego some of her rights for practical purposes. But no such condition can be stipulated, nor is it possible that she should not have equal rights. Similarly, the first wife also can voluntarily forego some of her rights for practical purposes, but she cannot formally renounce them.

Once Imam Baqir (P) was asked whether by mutual consent it could be stipulated that the husband would visit one of his wives only once a week or once a month, or that the maintenance allowance of one wife would not be equal to that of another wife. The Imam said that such stipulations were not valid even with the consent of any wife. By virtue of marriage, every wife was entitled to full marital rights. All that she could do was to forego some or all of her rights after marriage, either to please her husband or for some other reason.

With all these strict moral conditions polygamy becomes a duty instead of being a means of pursuit of pleasure. Pursuit of pleasure and licentiousness are possible only in an atmosphere of complete freedom to pursue one's desires. But where there is a question of discipline, justice and duty, there can be no room for lewdness.

Those who indulge in licentiousness under the pretext of polygamy misuse an Islamic law and the society has every right to call them to account and punish them.

APPREHENSION OF NOT DOING JUSTICE

To be fair, it must be admitted that the number of those, who observe in letter and spirit all the conditions laid down by Islam in respect of polygamy, is very small. According to the Islamic law, if a man apprehends that the use of water may be harmful to him he should not perform ablution for prayers, and if he apprehends that fasting may be harmful to him he should not keep fast. You come across many people who inquire of you whether they should or should not perform ablution, or whether they should or should not keep fast, for they apprehend that performing ablution or keeping fast might be harmful to them. Such inquiries are in order. Such people should not perform ablution and should not keep fast.

But the Holy Qur'an specifically says that if you fear that you will not treat your wives equally, you must have only one wife. Still you do not come across a single person who may say that he apprehends that he might not be able to treat two wives equally, and may inquire whether in his circumstances he should or should not have a second wife. It is evident that some people knowing well that they will not be able to do justice, still have several wives. They do so under the cloak of Islamic law. These are the people who bring a bad name to Islam by their unworthy action.

HAREMS

Another reason why Islam is criticised for polygamy is the system of harems adopted by the former caliphs and sultans. Some Christian writers and missionaries have described polygamy in Islam as equivalent to the system of harems with all its shameful and cruel aspects.

Unfortunately some of our own writers who, like a parrot repeat the ideas expressed by the Europeans, unnecessarily associate polygamy with harems. They are not endowed with enough independence of thinking to be able to distinguish between the two.

OTHER CONDITIONS

Besides the condition of justice and equality of treatment, there are also other conditions which a husband has to fulfil. We all know that a wife has a number of financial and other rights which the husband has to discharge. A husband has the right of having more than one wife, provided his financial condition allows him to do so. Financial soundness is a pre-requisite to monogamy also. Anyhow, we skip over further discussion of this question.

Physical and sexual potentialities are another pre-requisite.

It is reported in Al-Kafi and Al-Wasail that Imam Sadiq (P) has said that in case somebody collects several women, while he is not fit to satisfy them all, he will bear full responsibility if any of them takes to sin.

The historical accounts of the harems narrate many stories of young women, who, forced by the pressure of their sexual urges, had recourse to sin and occasionally became the cause of crimes and murders.

By now our readers should have become aware of the causes of polygamy and why Islam has not abolished this system. They should also have become aware of the conditions and limits prescribed by Islam in this respect. Islam has not disparaged women by allowing this system, but has rendered a great service to them. If polygamy is not allowed even where women of marriageable age outnumber men, women may become worthless toys in the hands of men. They may be treated worse than slave-girls, for man recognises the child of a salve-girl as his own, but he makes no such commitment in respect of his mistresses and concubines.

MODERN MAN AND POLYGAMY

Modern man is averse to polygamy, not because he wants to be content with one wife, but because he wants to satisfy his sense of variety by indulging in unlimited adultery, for which ample facilities are available. Sin and not fidelity has taken the place of polygamy. That is why modern man is opposed to plurality of wives which commits him to many duties and responsibilities, financial and otherwise. In the past, even for a licentious man, opportunities of sin were limited. That is why he had to take recourse to polygamy and, in spite of evading many duties, he still had to shoulder certain responsibilities in respect of his wives and children. The modern man who has ample opportunities of enjoyment does not see any necessity of making the least commitment. Hence he is averse to polygamy.

The modern man employs women as secretaries, typists etc. for his enjoyment, and credits the expenses to the account of the government, his firm or any other organisation in which he may be working, without having to pay a single penny from his own pocket.

The modern man changes his mistress after every few days without undergoing any formalities of dower, maintenance and divorce. M. Tshombe was vehemently opposed to polygamy, but he always had a young, beautiful secretary at his side whom he changed every year. With such possibilities there is evidently no need to countenance polygamy.

We read in the life account of Bertrand Russell, who was a severe opponent of polygamy, that two women, besides his grandmother, played an important role in his life. One was his wife, Alice, and the other was his sweet-heart, Morrel. Morrel who was one of the most prominent women of that period, was on friendly terms with a number of the writers of the early 20th century. Evidently such a man could not support polygamy.

Apparently it was Russell's extra marital love which put an end to his relations with Alice. He himself writes that one afternoon, while he was going on a bicycle to a summer resort in the suburbs, he suddenly felt that he no longer loved Alice.

BACK